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ABSTRACT

The text presents six chapters on the legal and governmental bases of special education. In the Introduction, F. Weintraub and J. Ballard cite the legislative and litigative history of P.L. 94-142, the Education for All Handicapped Children Act, and briefly address information sources on such policy issues as procedural safeguards, underserved populations, and standards of practice. In chapter 2, "The Education for All Handicapped Children Act of 1975 (P.L. 94-142): Its History, Origins, and Concepts," J. Zettel and J. Ballard review court cases and state and federal legislation, and list the rights of handicapped children, including the right to an appropriate education and the right to be educated in the least restrictive environment. J. Zettel in "Implementing the Right to a Free Public Education" analyzes five aspects of P.L. 94-142: zero reject, individualized education programs, least restrictive environment, nondiscriminatory testing and evaluation, and due process. In "Section 504: The Larger Umbrella," M. Gerry and J. Benton examine Section 504 of the Rehabilitation Act of 1973 in terms of its litigative background, statutory and regulatory setting, and enforcement. "The Education of Gifted and Talented Children from a Federal Perspective" by J. Zettel describes the cyclical nature of support and interest in education for gifted students. In the final chapter, "Interpreting the Rights of Exceptional Citizens through Judicial Action," B. Smith and J. Barresi summarize siginifcant cases concerning issues that have surfaced since passage of P.L. 94-142, including compensatory services, suspension and expulsion, and bilingual special education. Appendixes include a paper by J. Barresi and B. Ramirez, "The Federal Program Presence Accompanying P.L. 94-142," a list of federal laws for the handicapped from 1827 to 1981, and a list of resources. (CL)

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SPECIAL EDUCATION IN AMERICA: ITS LEGAL AND GOVERNMENTAL FOUNDATIONS

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Edited by Joseph Ballard, Bruce A. Ramirez,

and Frederick J. Weintraub

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The Council for Exceptional Children

Founded in 1922, The Council for Exceptional Children (CEC) is a professional association committed to advancing the education of exceptional children and youth, both gifted and handicapped.

CEC, with 50,000 members, acts as an advocate for every child's right to an appropriate education and influences local, state, and federal legislation relating to handicapped and gifted children. CEC conducts conventions and conferences and maintains an information center with computer search services and an outstanding collection of special education literature.

In addition to its membership periodicals, *Exceptional Children*, *TEACHING Exceptional Children*, and *Update*, CEC has a publications list of 75 titles including monographs, texts, workshop kits, films, and filmstrips.

Council Headquarters are at 1920 Association Drive, Reston, Virginia 22091-1589.

Contributors

Joseph Ballard, Associate Director, Department of Governmental Relations, The Council for Exceptional Children, Reston VA

Josephine Barresi, Policy Specialist, Department of Governmental Relations, The Council for Exceptional Children, Reston VA

J. Martin Benton, Attorney at Law, Washington DC

Martin H. Gerry, President, M. H. Gerry and Company, Washington DC, and former Director of the Office of Civil Rights within the U.S. Department of Health, Education and Welfare

Bruce A. Ramirez, Policy Specialist, Department of Governmental Relations, The Council for Exceptional Children, Reston VA

Barbara J. Smith, Policy Specialist, Department of Governmental Relations, The Council for Exceptional Children, Reston VA

Frederick J. Weintraub, Assistant Executive Director, Department of Governmental Relations, The Council for Exceptional Children, Reston VA

Jeffrey J. Zettel, Education Program Specialist, Compliance and Enforcement Branch, Division of Assistance to States, Special Education Programs, U.S. Department of Education, Washington DC

CHAPTER 1

Introduction: Bridging the Decades

FREDERICK J. WEINTRAUB
JOSEPH BALLARD

> Time has no divisions to mark its passage, there is never a thunder-storm or blare of trumpets to announce the beginning of a new month or year. Even when a new century begins it is only we mortals who ring bells and fire off pistols.
>
> Thomas Mann

Perhaps it is also through books that mortals mark and measure the passage of time. In 1975, after a half-decade of dramatic policy movement in the education of exceptional children culminating in P.L. 94-142, The Education for All Handicapped Children Act, The Council for Exceptional Children (CEC) published *Public Policy and the Education of Exceptional Children* to document what had transpired and provide information and insight into the process and nature of public policy and special education. For some, the book represented a chronicle and culmination of the struggle to establish effective special education policies, while others viewed it as only a documentation of the beginning. The editors of this book believe that public policy is evolutionary and thus always changing to meet the challenges presented by an ever-evolving society.

This book, too, marks a point in history. It does not replace *Public Policy and the Education of Exceptional Children*, but rather completes the last half of the decade of the 1970's, fills in a number of informational gaps from the previous book, and raises issues about public policy challenges facing special education in the future that is now upon us.

A Long History

There is ample reason to emphasize the public policy base developed in recent decades. Nonetheless, public policy promoting the education of exceptional children may be observed through a long and distinguished history of federal, state, and local activity. Over 150 years ago, in 1823, the state of Kentucky established the first state school for the deaf. Similar state schools for the deaf and the blind were subsequently established in many other states. Although debate still rages today over public support of private education, as early as 1852 the state of Pennsylvania appropriated funds to educate mentally retarded children in a private school. In 1864, President Abraham Lincoln brought the federal government into special education when he signed into law a bill creating Gallaudet College, an institution of higher education for the deaf.

Local special education policy grew during the last half of the 1800's and the first decade of the 1900's. In 1869, Boston established the first public day school for the deaf. Providence, Rhode Island, public schools established classes for retarded children just before the end of the

century, while at the same time Chicago was establishing classes for the physically handicapped and the blind.

The early 1900's saw many important public policy principles emerge in state law. In 1911, New Jersey adopted the first special education mandates in state law. Minnesota established special education certification requirements in 1915. In 1919, Pennsylvania provided for cooperative agreements to be developed by school districts for the delivery of special education. In 1923, Oregon passed legislation to provide for classes for "educationally exceptional children," a term which included the "gifted" child. Studies by the U.S. Office of Education indicate that the percentage of handicapped children being provided special education was 12% in 1948, 21% in 1963, and 38% in 1968.

President Dwight Eisenhower, in 1958, signed into law two bills that would have significant impact on the education of exceptional children and public education as a whole. P.L. 85-926 provided grants to colleges and universities to train personnel to teach deaf children. This law expanded to all exceptionalities and in 1963 became the foundation for what would become The Education of the Handicapped Act. The same year the National Defense Education Act became law. This federal Act was significant for three reasons: it represented the first major federal investment in elementary and secondary education; it was categorical in that it focused on specific national needs and populations; and it had as one of its primary missions the advancement of education of gifted and talented children.

As early as 1931, the U.S. Office of Education established a Section on Exceptional Children. This agency, upgraded by President John Kennedy in 1963 to the Division of Handicapped Children and Youth, was, however, abolished in 1965.

Also in 1965, the Congress passed the Elementary and Secondary Education Act (ESEA), with a primary focus on improving the instructional program of educationally disadvantaged children, including handicapped children. When it became evident that handicapped children were not being directly benefited, the Congress responded by adding a specific program (P.L. 89-313) to aid the education of handicapped children in state-supported schools and institutions. In 1966, the Congress created The Education of the Handicapped Act (P.L. 89-790), which for the past 15 years has been the foundation of the federal role in special education. The Act provided for grants to states, state plans, research, and personnel preparation, and also mandated the establishment of the Bureau of Education for the Handicapped (BEH) in the U.S. Office of Education (USOE).

During the remainder of the 1960's Congress continued to expand the federal role in special education by amending EHA and adding programs such as regional resource centers, centers for deaf-blind children, instructional media, teacher recruitment, early childhood models, and programs for children with specific learning disabilities. The reader is referred to the Appendices of this book for a review of the current status of these programs.

While the Congress was creating special federal programs for special education, it also began setting aside funds for handicapped youth within the basic federal program of support to the states for vocational education. Similarly, a set-aside for handicapped children was fashioned within the federal program of educational innovation and development (ESEA, Title III). This approach to program support would continue into the early 1970's, with an earmark in the federal Headstart program and a fiscal formula for the federal impact aid program which would include a special "weight" for the handicapped.

During the 1960's, few gains were made on behalf of gifted and talented children. In fact, state policies and federal initiatives declined during this period. However, education of the handicapped continued to expand in a developmental fashion throughout the decade.

The Courts

In 1971 the courts were ordering equal educational opportunity for all handicapped children, affirming that the Fourteenth Amendment allowed nothing short of "zero reject" for these children in the nation's school systems. In 1971 and 1972, two major precedent-setting decrees came down from the bench. In *Pennsylvania Association for Retarded Children* (PARC) v. *Commonwealth of Pennsylvania* (1971), and soon thereafter in *Mills* v. *D.C. Board of Education* (1972), the not-so-invisible walls of exclusion were thrown down, and specific procedural due process rights for handicapped

children and their parents were ordered. Suffice it to say that within another year similar cases on behalf of handicapped children were being filed across the country, and fairly consistent decrees were being handed down in the various courts. *Mills* and *PARC* were being affirmed nationwide. In a compilation of litigation published by CEC (Abeson & Bolick, 1973), 31 cases are cited as pending or completed under the general rubric of right to education. Moreover, the geographic locations in which the various cases were filed indicate an excellent representation of the major regions of the nation.

It is important to observe that, through the long procession of detailed litigation, not one, but a number of essential rights for handicapped children were being collectively affirmed from the bench. These legal rights were: (a) the right to a free public education; (b) the right to a full and appropriate education; (c) the right to full administrative due process of law; (d) the right to education in the least restrictive educational environment; and (e) the right to ethnically and racially nondiscriminatory testing and other assessment procedures. All of these legal guarantees would be reflected in the later activities of the nation's state and federal legislative bodies.

It should be further noted that two other discrete lines of litigation accompanied and to a degree blended with the judicial right-to-education movement. What is called the "right-to-treatment" movement is well represented by the case of *Wyatt* v. *Stickney* (1972) in which Judge Johnson of the northern U.S. District of Alabama offered a celebrated decree on behalf of right to treatment for the institutionalized mentally ill and mentally retarded. In addition, the courts were now addressing the alleged overrepresentation of both racial and ethnic minorities in special education in a line of cases that began with *Diana* v. *State Board of Education* (1970), quickly followed by the case of *Larry P.* v. *Riles* (1972). The reader is referred to Chapter 6 for a review of where the nation finds itself ten years later in respect to litigation concerning the issues of right to education; right to treatment; and what may be called right to nondiscriminatory assessment and placement.

In what has become typical political behavior in the United States in this second half of the twentieth century, the judicial branch was now, in effect, making truly dramatic public policy, and it would be left to the legislative bodies to either maintain a hands-off policy or affirm the courts by statute.

The Legislatures

It would appear that much of the growing citizen pressure on behalf of handicapped children was being felt by the members of the state legislatures between 1970 and 1975. Clearly documented evidence shows a nearly unprecedented flurry of activity to enact statutes guaranteeing special education for handicapped children. By 1972 almost 70% of the states had enacted mandatory legislation requiring the education of all handicapped children. Moreover, by 1975 all but 2 states had adopted some type of mandatory legislation, and 37 of the 48 states with some type of mandatory law had passed their current special education legislation since 1970 (Abeson, 1972). It is thus abundantly clear that, even before enactment of federal mandates, the vast majority of the states had committed themselves to a positive agenda on behalf of handicapped children. It was now left to the federal government to seal the agreement in a manner which would allow no boundaries, regional, state, or local.

It should be noted at this point that a very critical commonality of objectives was taking shape across the country among certain major national organizations which until now had been fighting the good fight on behalf of handicapped children primarily in the courts and the state legislatures. These organizations now found themselves remarkably unified in their quest to persuade Congress that it must issue a "national minimum floor of responsibility." These organizations include The Council for Exceptional Children, the Association for Retarded Citizens, United Cerebral Palsy Inc., the Association for Children with Learning Disabilities, the Society for Autistic Children, the Epilepsy Foundation of America, and the American Speech, Language and Hearing Association.

In addition, support for a national special education mandate caused a rather loose marriage of convenience between the aforementioned coalition and some very prominent national education organizations, such as the National School Boards Association (representing the local boards of education nationwide), The Council of Chief State School Offi-

cers, and the National Education Association. These educational organizations were, of course, equally dedicated to achieving an appropriate education for handicapped children, but had other, more pragmatic objectives in lending their support. Specifically, they had an eye toward whatever federal fiscal assistance might be brought into play to meet court and state mandates, and the obvious benefit a floor of nationwide policy would have in offsetting their current obligation to respond to every individual court order and the often quite varying details of legislation from state to state.

The events and forces that led to P.L. 94-142 are discussed by Zettel and Ballard in Chapter 2 and need not be requoted here. But one Congressional event is worthy of special note. P.L. 93-380, The Federal Education Amendments of 1974, signed by President Gerald Ford on August 24, 1974, was a significant piece of legislation for all exceptional children, handicapped and gifted. For the handicapped, this legislation acknowledged the right to an education as previously affirmed by the courts and the state legislatures, and ordered a number of state plan assurances on matters such as least restrictive environment and due process safeguards. Though P.L. 93-380 was admittedly short on hard mandatory clout, and therefore a much tougher P.L. 94-142 would still be required, it was long on what may be called "omen." Zettel and Ballard are correct when they describe P.L. 93-380 in Chapter 2 as the "early warning legislation." As is typical in the human mileu, some would heed the warning, others would not.

For gifted and talented children, the Congress through P.L. 93-380 inaugurated the sort of "seed and catalytic" program at the federal level it had previously initiated for the handicapped in the 1960's. For the first time, a federal Office for Gifted and Talented Children was authorized. Included as components for that office were a state grant program and a program of personnel development, along with research, model project, and information components. In reality, both authorized program and authorized dollars were modest. On the other hand, the first national initiative toward meeting the unique special educational needs of our nation's gifted and talented children had clearly been set in motion. This development is discussed in detail in Chapter 5, "The Education of Gifted and Talented Children from the Federal Perspective."

P.L. 94-142 and Section 504

The final act in our brief review of the period 1970–1975 is well known to the reader. On November 29, 1975, President Gerald Ford signed into law P.L. 94-142, The Education for All Handicapped Children Act of 1975.

P.L. 94-142 ordered that "a free appropriate public education will be available for all handicapped children between the ages of three and eighteen within the state not later than September 1, 1978." Furthermore, P.L. 94-142 ordered a guarantee of all the other rights previously established through litigation; prescribed a written, individualized education program for every handicapped child receiving special education; stipulated a single agency responsibility in each state; and established an authority for greatly increased federal participation in the financing of special education nationwide. The potential impact of the Act is reflected in this statement by Al Shanker, President of The American Federation of Teachers:

> The general public and press have paid little attention to one of the most important developments in the history of American education, one with far-reaching consequences for every parent, teacher and school district in the country. (Shanker, 1977, p. E7)

The authors have delayed commenting on the historic Section 504 of the Rehabilitation Amendments of 1973 because it was not implemented until 1977. Quite simply, Section 504 constitutes a one-sentence "Civil Rights Act" for handicapped Americans of all ages. It reads:

> No otherwise qualified handicapped individual in the United States . . . shall solely by reason of his handicap be excluded from the participation in, be denied the benefit of, or be subjected to discrimination under any program or activity receiving federal financial assistance.

But Section 504 needed regulations, both to signal a real commitment from the federal government to enforce 504 and to explain more precisely exactly what was now required. However, for various political as well as substantive reasons, final regulations for Section 504 were delayed for a number of years, thereby creating

a situation in which the regulations for P.L. 94-142 and Section 504 were being developed and finalized at roughly the same time.

It became critical that the final regulations for Section 504 as they relate to elementary and secondary education conform as closely as possible to the statutes and the regulations of P.L. 94-142. After considerable nationwide consultation and extensive negotiations between BEH and the U.S. Office of Civil Rights, this objective was largely achieved. In Chapter 4, "Section 504: The Larger Umbrella," Gerry and Benton provide an in-depth treatment of Section 504 development.

Implementation and Survival

From a policy perspective, the last five years have been a period of implementation and survival. State and local policies had to be changed to comply with federal requirements. Procedural safeguard systems had to be developed. Millions of professionals and parents needed to be educated as to their rights and responsibilities. Additional funds were required from all levels of government, at a time when funding for education was declining. As a result, special education was brought "out of the closet" and placed under public scrutiny. P.L. 94-142 became the battle cry for both those who saw good and those who saw evil in the federal government's role in education.

During 1977 and 1978, the first years of implementation, many primarily state-level governmental interests and certain educational interests called for Congressional action to repeal or weaken some of the requirements of P.L. 94-142. Similarly, consumer and civil rights interests called for tougher enforcement, greater rights, and more detailed requirements. In consequence of this dialogue, the Congress declined to amend P.L. 94-142. In point of fact, at this writing, there have been no amendments to P.L. 94-142, save three of a technical nature relating to the funding formula.

During the course of the 96th Congress, 1979 and 1980, both the House and Senate conducted extensive "oversight" hearings on P.L. 94-142, in Washington, D.C. and around the country. With approximately two years of implementation under everyone's belt, these hearings seemed truly useful and informative to many observers. Practically no major organization called for any of the sort of amendments previously mentioned, including none of the state-level groups who had done so in 1977. The chief anxiety heard from parents, professionals, and advocate groups, seemed centered upon "how to get the job done." Four constantly recurring pleas were the following: the need for more money; the need for more personnel; the need for greater early childhood focus; and the need to bring resources of other state and federal agencies into play. The reader is referred to Chapter 3, "Implementing the Right to a Free Appropriate Public Education."

In 1981, the new Reagan Administration sought to check the evolution of federal public policy for exceptional children. Similar efforts were initiated at the state and local levels. Basically, these efforts take three directions: (a) reduction in levels of funding, (b) reduction or elimination of federal or state mandates, and (c) elimination of categorical funding in favor of more open-ended support (block grants). During 1981 the Congress and many state legislatures found themselves faced with proposals to alter special education policies along these lines. On the whole, these efforts were defeated, though some minor financial losses were sustained and some policies were slightly altered. The greatest alteration was the folding of the federal program for gifted and talented children into a comprehensive education block grant.

Dr. William Johnson, a recent Past President of The Council for Exceptional Children, perhaps best summarized the past and pointed to the future when he stated:

> Special education's past decade will be recorded by social historians as a period where a field of human endeavor accomplished a level of change for the benefit of a group of children that was unparalleled in the history of education and perhaps society. A decade ago, a million handicapped children were prohibited from participation in education. Today these children enjoy the opportunity of education along with their brothers and sisters. A decade ago special education was the "stepchild" of education and, thus, was constrained in the level of services that it could provide to the children it served. Today the range of services being provided is beyond many of our dreams. A decade ago the goal of providing special education for gifted and talented children was only in

the consciousness of a few: today it has become the active campaign of many. A decade ago few people were attracted to enter the profession of special education. Today the number entering annually is ninefold. A decade ago the financial resources of special education were limited to those the political system was "charitably" willing to commit. Today at all levels of educational governance special education has become a full partner in the sharing of educational resources. A decade ago the concern for the education of exceptional children was shared almost exclusively by the special education profession and the parents of the children. Today, all segments of society are conscious of the struggle.

The past decade was not an easy one. It took its toll on many good people. It is one thing to dream of how the world should be and another to experience the turmoil of the implementation of that dream. But the success of the past decade is a testament to the devotion, character and quality of special educators, and for that we in special education should take great pride.

As we begin a new decade, we should honor the achievements of the past decade, but not be constrained by them in determining the future. Our goal is to provide exceptional children with a quality education and to assure that special educators have the skills, resources and conditions to provide such quality education. To achieve this goal for the eighties we must be willing to put the past aside, with honor, and dream again. We must be willing to share the dream and have the resoluteness and unity necessary to achieve it. To this purpose The Council for Exceptional Children is committed and it is to this purpose that we remain committed to each other. (Johnson, 1980, p. 2)

Other Policy Issues

We have chosen thus far to discuss the existing public policy base, with appropriate references to chapters in this book. There are, however, many other existing and emerging policy issues facing special education today that have not been fully explored in this volume. A number of related publications are available for those who wish to examine specific policy issues more thoroughly. A complete list, including information on ordering, is provided in Appendix C.

Special Populations

The first group of issues requiring attention in the eighties involves the assurance of a free appropriate public education to all exceptional children, regardless of their exceptionality, age, or environmental, cultural, or legal circumstances.

Gifted and Talented. Services and protections afforded handicapped children need to be extended to gifted and talented children. States such as Pennsylvania, Florida, North Carolina, and some others have made significant strides in this regard; however, conservative estimates show only 40% of the gifted and talented children in this country are receiving any special education. Further, only 14 states reported serving 40% or more of their gifted and talented children. A thorough exploration of issues related to education policy for the gifted and talented is set forth in *Model State Policy, Legislation and State Plan Toward the Education of Gifted and Talented Students* (Grossi, 1980) and *An Administrator's Handbook on Designing Programs for the Gifted and Talented* (Jordan & Grossi, 1980).

Early Childhood. The evidence is dramatic and clear that educational intervention at the earliest years is essential in order for exceptional children to achieve educational equality with their nonexceptional peers or to develop their abilities to the fullest. During the period prior to 1975, preschool programs for exceptional children underwent rapid expansion. An increasing number of states mandated services, in some instances from birth. However, the advent of P.L. 94-142 and tighter school budgets have resulted in a substantial slowdown in the expansion of preschool programs. As greater resources are required to meet the mandated needs of the school-age population, new efforts are needed to turn this trend around.

A review of the present state of early childhood policy and suggestions for future directions are presented in *Policy Considerations Related to Early Childhood Special Education* (Smith, 1982).

Minority Groups. The determination and delivery of appropriate education to minority exceptional children also remain a problem. Historically, special education programs for mildly handicapped children have had a disproportionately large minority child representation. Public policies, through litigation and legislation, improved professional practice and sensitivity, greater advocacy, and public awareness, have reduced this discrepancy, but it still exists and further efforts are needed.

Minority children are also over-represented in institutions and other publicly supported custodial facilities and under-represented nationally in programs for more severely handicapped children and for gifted and talented children. This situation may be a result of the inadequacy of special education services in school districts of less wealth, which also happen to be districts of substantial minority population (i.e., urban centers, isolated rural areas, Indian reservations, etc.). These are the same areas that are reported as having waiting lists for services, lower percentages of exceptional children served, and children more readily becoming wards of the state and thus being served by systems outside of public education.

Minority exceptional children are often denied the benefits they would otherwise receive if they were not exceptional. Bilingual exceptional children often do not receive bilingual education if they receive special education. Similarly, special cultural programs are denied otherwise eligible exceptional children. These and other issues impacting on minority exceptional children will require special attention in the 1980's.

The following resources provide focused information on minority and bilingual exceptional children: *An Appropriate Education for Handicapped Children of Limited English Proficiency* (Baca, 1982); *Federal Mandates for the Handicapped: Implications for American Indian Children* (Ramirez & Smith, 1978); Special Issue on Culturally Diverse Exceptional Children, *Exceptional Children*, May 1980.

Underserved Populations. In some circumstances it has been very difficult to deliver the mandated free appropriate education to exceptional students. Additional efforts must be exerted if youth in correctional institutions, children in rural areas, and migrant handicapped children are to be served effectively. Resources include: *Education of Adjudicated Handicapped Youth: Policy Issues and Implications* (Hockenberry, 1980); *Problems in Implementing Comprehensive Special Education Programming in Rural Areas* (Helge, 1981); Special Issue on Educating Migrant Handicapped Students, *Exceptional Children*, April 1982.

Procedural Safeguards

A second cluster of issues concerns the decision-making and legal processes of special education. While the courts and legislatures worked out a complex procedural safeguard system in the 1970's, efforts will be needed in the 1980's to refine and balance this system. Several issues in this regard will receive particular attention.

Procedural safeguards, to be meaningful, require that both schools and parents exercise their rights on behalf of their perceived interests of the child. To accomplish this, both the parents and schools must know their rights and be able to exercise them. Many parents of exceptional children do not know or understand their rights and thus do not exercise them; others do know their rights, but for a variety of reasons are unable to exercise them. Children of such parents remain vulnerable, as if the protections did not exist. This dilemma is not unique to special education; it is manifested throughout our nation's judicial system. But in special education there is a unique component to the problem: The primary party involved in procedural protections, the parent, is not the direct consumer affected—it is the child. If parents fail to exercise their rights, they are not the ones who will suffer the consequences of inappropriate testing or placement. Alternatives to resolving this problem have profound legal, moral, and professional implications which reach far beyond the realm of special education. P.L. 94-142 gives considerable recognition to the role and responsibility of parents. It also attempts to safeguard exceptional children who have no parents or who are wards of the state by calling for assignment of surrogate parents to ensure that the rights of such children are protected. A detailed treatment of the surrogate parent mandate is found in *Policy Options Relating to Surrogate Parent Mandates of The Education for All Handicapped Children Act* (Ross, 1979).

Standards of Practice

The ultimate weapon for reducing vulnerability would be to ensure that personnel who serve exceptional students never behave inappropriately. Several elements of this issue need to be examined. Standards of practice need to be established so that persons who serve know what is and what is not appropriate. For example, school personnel are now required to feed some exceptional children. What are the appropriate conditions and methods for such feeding? If standards do not exist, personnel cannot advocate to assure exemplary conditions and methods, nor can they protect themselves from liability due to possible charges that they are behaving inappropriately.

Professionals also need to be free to behave responsibly, yet there are times when professionalism conflicts with the system. For example, a director of special education may be ordered by his or her superior to stop identifying exceptional children because the system cannot afford to provide additional services. Or a psychologist may be pressured to diagnose a disorderly child as emotionally disturbed so that the child can be removed from the classroom. Do these requests violate professional ethics? Do professionals have the right to *not* violate professional ethics? Is one's employment secure if one insists on behaving according to professional ethics?

Finally, the reality of what happens to exceptional children occurs in their interactions with direct service personnel. While IEP's may prescribe the services to be provided, often only the direct service personnel know whether the services are actually being delivered as prescribed. Unless these professionals have the authority to question apparent shortcomings, obligations set forth in the IEP may be meaningless. Frith challenges the special education profession on this issue in his article "'Advocate' vs. 'Professional Employee': A Question of Priorities for Special Educators" (*Exceptional Children*, April 1981).

Quality of Education

During the 1980's, many policy issues will emerge relating to the nature and scope of the special education that is provided exceptional children, as well as strategies for improving the quality of special education. Thomason and Arkell, in "Educating the Severely/Profoundly Handicapped in the Public Schools: A Side-By-Side Approach" (*Exceptional Children*, October 1980), address some of these issues as they pertain to educating severely and profoundly handicapped children. The issue of the extended school year is examined in an article by Larsen, Goodman, and Glean, "Issues in the Implementation of Extended School Year Programs for Handicapped Students, (*Exceptional Children*, January 1981). The impact of the minimum competency testing movement on handicapped students is examined by McCarthy in "Minimum Competency Testing and Handicapped Students" (*Exceptional Children*, November 1980).

Funding

The adequacy and efficiency of special education funding systems may be the most critical public policy issue facing special education in the 1980's. In a special report, "Planning State Fiscal Policies to Meet Local Needs" (Weintraub & Higgins, 1982), the critical policy variables that must be considered to assure an effective fiscal system are examined.

Conclusion

This introductory chapter has provided a brief history of the public policy base in special education, as well as a discussion of selected current and emerging issues. In Chapter 2 of this volume, Zettel and Ballard most appropriately quote the late Associate Justice Benjamin Cardozo: "The law never is; the law is always about to be." We have tried here to portray this one inescapable reality: Public policy is an ever-evolving process.

It is our conviction that the many hundreds of thousands of persons involved in the business of educating—or simply caring about—exceptional young Americans must never allow themselves to be buried in a perpetual defense of either the past or the present. We should always be about the task of vigorously and aggressively building a better future for the exceptional persons among us. We hope that this book may make some small contribution to this noblest of tasks.

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CHAPTER 2

The Education for All Handicapped Children Act of 1975 (P. L. 94-142): Its History, Origins, and Concepts

JEFFREY J. ZETTEL
JOSEPH BALLARD

In November of 1975 the Congress of the United States passed the Education for All Handicapped Children Act (P. L. 94-142) and thereby mandated that all school-age handicapped children in the United States were to have available to them a "free, appropriate public education" by September 1, 1978. To accomplish this the Congress also prescribed a set of minimum standards that were to be followed by state and local education agencies to insure that such an education was indeed being provided. The purpose of this particular Chapter is twofold. First, it will provide an account of the basic tenets of the law, its origins, and its legislative history. Second, it will describe a number of the minimum standards established by this act that directly relate to and impact upon the education of handicapped children.

The Education for All Handicapped Children Act of 1975, Public Law 94-142, can be depicted as being both conservative and progressive in what it prescribes for handicapped children. P. L. 94-142 is not revolutionary in terms of what it requires. In fact, as the following Chapter will demonstrate, most of the policies, procedures, and services that are set forth by this act represent standards that have been laid down since 1971 by courts, legislatures, and other public policy bodies throughout the country. P. L. 94-142 is also not revolutionary in terms of the role it prescribes for the federal government in the delivery of services to handicapped children. Rather, the act represents the continued evolution of federal responsibility and commitment in the provision of equal educational opportunity to vulnerable and/or minority group children.

P. L. 94-142 can, however, be described as progressive in the sense that the federal government has now established a set of minimum standards that must be followed by states and local educational agencies regarding the education of handicapped children.

The purpose of this Chapter is to provide the reader with a basic understanding of the law, its origins, and its history, and most importantly, the minimum standards it prescribes for the provision of a free, appropriate public education for all handicapped children.

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The Right to an Education

> Out of school children share a common characteristic of differentness by virtue of race, income, physical, mental or emotional "handicap," and age. They are, for the most part, out of school not by choice but because they have been excluded. (Children's Defense Fund, 1974)

In 1979, all 50 states had statutory provisions authorizing and requiring them to maintain systems of free public education. The constitutions of about half of those states specified that this education shall be equally available to all children. The constitutions of the majority of the remaining states called for their public education programs to be "general, uniform, and thorough," or "thorough and efficient" (Burgdorf, 1975).

Despite such constitutional authority, and regardless of the fact that 49 states have compulsory attendance laws, there are nevertheless a substantial number of children in this country who have not received and still do not receive the benefits of a publicly supported education. Based on its analysis of the U.S. Census Bureau's 1970 data on nonenrollment, the Children's Defense Fund (CDF) found there to be nearly two million children aged 7 to 17 who were not enrolled in school. Furthermore, CDF postulated that this number most likely represented only "the surface" of the total number of school-age children who were not receiving an education (Children's Defense Fund, 1974).

Handicapped children have been particularly susceptible to such educational exclusion. States and local educational agencies have used a variety of mechanisms to justify these practices. For example, many states, prior to 1973, had compulsory attendance laws that actually provided for the nonattendance of certain handicapped children. Nevada statutes allowed for the exclusion of children whose "physical or mental condition or attitude [is] such as to prevent or render inadvisable [their] attendance at school or [their] application to study" (Nevada Revised Statutes, 1963). Likewise, many school districts excluded children who were blind, deaf, "feebleminded," or seriously emotionally disturbed on the grounds that there were no educational programs to meet their needs. Some states prohibited the provision of homebound or in-hospital instruction because they were not specifically mentioned or authorized in the written state policy. Access to special education was too often limited to only those children who met strict state definitions. Children defined as educable were admitted to public programs; those classified as trainable often were not. Finally, many handicapped children were further excluded from receiving a publicly supported education when they could not meet specific behavioral or physical entrance requirements. A 1971 North Carolina statute, for instance, specified that in order for a trainable mentally retarded child to be admitted to a public school program within the state, he had to be "trained in toilet habits so that he [has] control over his body functions" (North Carolina Department of Public Instruction, 1971).

Studies conducted by the U.S. Office of Education have verified the continued educational neglect suffered by this population. In 1948, for example, it was reported that only 12% of the nation's handicapped children were receiving a special education. In 1963, statistics revealed that 21% were being served, and by 1967, this figure had grown to only 33%. Data gathered for Title VI of the Elementary and Secondary Education Act in 1968–1969 further illustrated the significant variation among the states in the percentage of handicapped children served. Nineteen states were providing a publicly supported education to fewer than 31% of their handicapped children, while eleven were serving 20% or less. Only seven states in 1968–1969 were serving in excess of 51% of their handicapped children (Weintraub, Abeson, & Braddock, 1971).

Early Litigation

> No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws. (Fourteenth Amendment, U.S. Constitution, 1868)

According to the Fourteenth Amendment, no state may deny any person within its jurisdiction equal protection of the laws. This amendment also prohibits any state from denying a governmental benefit (for example, a public education) to any individual or group of indi-

viduals because of specific unalterable or uncontrollable characteristics, such as race, sex, age, or handicap.

In 1954, the U.S. Supreme Court ruled in *Brown* v. *Board of Education* that racial segregation in the public schools violated the Fourteenth Amendment. In addition to proclaiming that the doctrine of separate but equal has no place within the field of public education and that separate educational facilities are inherently unequal, the court reminded the states and their localities of the importance of education to the individual when it decreed:

> Today, education is perhaps the most important function of state and local governments. . . . In these days it is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education. Such an opportunity, where the state has undertaken to provide it, is a right which must be available to all on equal terms (*Brown* v. *Board of Education*, 1954).

Shortly after this decision, a letter was sent to the editor of *Children Limited*, a newsletter of the National Association for Retarded Children. Its author proclaimed the relationship and importance of the *Brown* decision for handicapped children: "You will recognize, I am sure, that this statement of equal opportunity applies to the handicapped as it does to the minorities" (*Children Limited*, 1955). Whether or not others at the time shared such feelings is unknown. However, it was not for another sixteen years that the concept of equal educational opportunity established in *Brown* would be judicially applied to handicapped children.

In 1971 and 1972, two of the most heralded and precedent-setting right to education cases involving handicapped children took place in the state of Pennsylvania and in the District of Columbia. Both sought action against state statutes and policies that excluded handicapped children from receiving a public education. In Pennsylvania, the Pennsylvania Association for Retarded Children (PARC) and thirteen school-age mentally retarded children brought a class action suit against the Commonwealth of Pennsylvania for its alleged failure to provide all of its school-age retarded children with a publicly supported education (*Pennsylvania Association for Retarded Children* v. *Commonwealth of Pennsylvania*, 1972).

Expert witnesses for the plaintiffs established the following critical points:

1. The provision of systematic educational programs for mentally retarded children will produce learning . . . all mentally retarded children are capable of benefiting from a program of education and training.
2. Education cannot be defined solely as the provision of academic experiences for children. Rather, it must be seen as a continuous process by which individuals learn to cope with and function within their environment. Thus, for some children to learn to clothe and feed themselves is a legitimate outcome achievable from a public school program.
3. Having undertaken to provide a free public education to all of its children, including its mentally retarded children, the Commonwealth of Pennsylvania may not deny any mentally retarded child access to a free public program of education and training.
4. The earlier mentally retarded children are provided with educational experiences, the greater the amount of learning that can be predicted. This principle relates to the provision of preschool programs in some school districts for nonhandicapped children—programs to which preschool mentally retarded children were denied entry (*Pennsylvania Association for Retarded Children* v. *Commonwealth of Pennsylvania*, 1972).

The *PARC* suit was resolved by a consent agreement that specified that the state could not apply any law that would postpone, terminate, or deny mentally retarded children access to a publicly supported education, including a public school program, tuition or tuition maintenance, and homebound instruction. Furthermore, the agreement required the state to locate and identify all school age retarded children who were excluded from the public schools and to place them in a "free public program of education and training appropriate to [their] capacity." Local school districts providing preschool programs to nonhandicapped children were also required to provide the same for mentally retarded children. Finally, the decree pro-

claimed that it was highly desirable to educate mentally retarded children in programs most like those provided for nonhandicapped children.

Following closely in the footsteps of *PARC*, a second even more impressive federal decree concerning the right to education for handicapped children was achieved in 1972. In *Mills* v. *Board of Education* (1972), the parents and guardians of seven District of Columbia children brought a class action suit against the District on behalf of all out-of-school handicapped children. At issue was the manner in which the plaintiffs were denied entrance to or excluded from publicly supported programs. According to the complaint,

> The plaintiffs were so excluded without a formal determination of the basis for their exclusion and without provision for periodic review of their status. The plaintiff children merely have been labeled as behavior problems, emotionally disturbed, or hyperactive (*Mills* v. *Board of Education*, 1972).

Moreover, it was attested that

> . . . the procedures by which plaintiffs were excluded or suspended from public school are arbitrary and do not conform to the due process requirements of the Fifth Amendment. Plaintiffs are excluded and suspended without: (a) notification as to a hearing, the nature of offense or status, any alternative or interim publicly supported education; (b) opportunity for representation, a hearing by an impartial arbiter, the presentation of witnesses; and (c) opportunity for periodic review of the necessity for continued exclusion or suspension (*Mills* v. *Board of Education*, 1972).

Mills, unlike *PARC*, was resolved by a judgment against the defendant school board. The result was a court order that the District of Columbia had to provide all handicapped children, regardless of the severity of their handicaps, with a publicly supported education. In addition, the court indicated that before any eligible handicapped child could be excluded from a regular school program, alternative educational services designed to meet the child's needs (including special education or tuition grants) had to be provided.

The defendants in *Mills*, however, claimed that it would be impossible for them to afford the kind of relief specified by the court unless the Congress appropriated more funds. To this, the court responded:

> If sufficient funds are not available to finance all of the services and programs that are needed and desirable in the system, then the available funds must be expended equitably in such a manner that no child is entirely excluded from a publicly supported education consistent with his needs and abilities to benefit therefrom (*Mills* v. *Board of Education*, 1972).

Forty-six similar right-to-education cases took place in twenty-eight different states during the next two and a half years. From a judicial perspective, the right of a handicapped child to participate in a publicly supported educational program was no longer to be questioned. By 1975, this principle had been irrefutably established by case law in an overwhelming majority of the states.

State and Federal Legislation

Widespread publicity and political activism on behalf of concerned parents and professionals followed these judicial precedents and further helped to solidify a handicapped child's right to an education through the promulgation of a variety of state statutes and regulations. By 1972, it was reported that nearly 70% of the states had adopted mandatory legislation requiring the provision of a publicly supported education for all of their handicapped children as defined in their state policies (Abeson, 1972). By 1975, all but two state legislatures had adopted some type of statutory provision calling for the education of at least the majority of their handicapped children (U.S. Congress, Senate, 1975).

In spite of the ongoing litigation on behalf of handicapped children, and despite the continuing development and refinement of state-level legislative mandates, it became clear in the early to mid 1970's that altogether too many handicapped children either were still being excluded from the nation's school systems or were receiving an inappropriate education.

Hearings before the U.S. Senate Subcommittee on the Handicapped and U.S. House Subcommittee on Select Education in the spring of 1975 demonstrated the following:

- Over 1.75 million handicapped children in America were still being excluded from

receiving a public education solely on the basis of their handicaps.

- Over half of the estimated handicapped population in this country was not receiving the appropriate educational services they needed or were entitled to.
- Many handicapped were still being inappropriately placed in educational settings because their handicaps remained undetected or because of a violation of their individual rights (U.S. Congress, Senate, 1975).

Because of these and other similar conditions, a drive commenced to establish a federal mandatory base to create a minimum floor of educational responsibility that would cut across all state and local boundaries. Obviously, federal legislation was in order, but what kind of federal legislation?

Since what was called for was essentially a bill of rights for this vulnerable population of children that was under consideration, congressional attention first focused on the obvious vehicle, amendment of the historic Civil Rights Act of 1965. But this solution was never to be, since a somewhat simpler but equally effective legislative vehicle was inaugurated by the Congress with respect to another minority group population.

The federal Education Amendments of 1972 (P. L. 92-318) included the now famous Title IX, which in effect ordered a guarantee of the civil rights of women within the nation's educational environment. This legislation set an important precedent in the overall arena of civil rights on at least two counts. First, the federal government sought to guarantee certain rights of an aggrieved population through the vehicle of routine statutory legislation, rather than through either amendment to the Civil Rights Act of 1965 or amendment to the U.S. Constitution. Secondly, and equally important, was the fact that certain rights were being guaranteed within one specific segment of the commonwealth, namely, the educational systems.

The implications of this dual precedent were not lost on the interested parties. In point of fact, the first proposed legislative version of what would eventually become P. L. 94-142 was introduced by U.S. Senator Harrison Williams (D-NJ) and others among his senatorial colleagues in that same year, 1972.

Just one year later, the same technique was applied in order to place on the books what is undoubtedly the most far-reaching civil rights provision on behalf of handicapped Americans of all ages. Short in its language but long on its implications, Section 504 of the Vocational Rehabilitation Amendments of 1973 reads "no otherwise qualified handicapped individual in the United States . . . shall solely by reason of his handicap be excluded from the participation in, be denied the benefit of, or be subjected to discrimination under any program or activity receiving federal financial assistance" (P. L. 93-112). With respect to handicapped children and their educational rights, Section 504 was to receive much of its specificity in the later P. L. 94-142.

With the enactment of the Education Amendments of 1974 (signed August 24, 1974), the U.S. Congress issued what might be characterized as early warning legislation, suggesting that the full mandate of the later P. L. 94-142 was certainly being contemplated. This legislation (P. L. 93-380) affirmed the right to an education as previously affirmed by the courts and the state legislatures. Moreover, within the construct of the limited existing fiscal support program (EHA, Title VI-B), the Congress ordered state education agencies to develop and submit to the U.S. Commissioner of Education detailed, long-term state plans toward achieving full educational opportunity for all handicapped children within each state. Many do not know that this legislation also sought assurances from the states in such areas as the guarantee of procedural safeguards and the guarantee of education in the least restrictive environment. But all of this fell short of one essential ingredient, namely, an outright mandate from the federal government to the states.

With the enactment into law of the Education for All Handicapped Children Act of 1975 (P. L. 94-142, November 29, 1975), combining an educational bill of rights for handicapped children with the promise of an increased federal fiscal partnership, that mandate became a matter of precise national policy. Included among the purposes cited by the Congress was "to assure that all handicapped children have available to them . . . a free appropriate education" (P. L. 94-142). More specifically, the act ordered that "a free appropriate public education will be available for all handicapped children between the ages of 3 and 18 within the state not later than September 1, 1978.

In winning the right to a free, appropriate public education, however, handicapped chil-

dren won much more than the opportunity to participate in publicly supported educational programs. As mandated by P. L. 94-142, handicapped children have also won (a) the right to nondiscriminatory testing, evaluation, and placement procedures; (b) the right to be educated in the least restrictive environment; (c) the right to procedural due process of the law; (d) the right to a free education; and finally (e) the right to an appropriate education.

The Right to Nondiscriminatory Testing, Evaluation, and Placement Procedures

> [A] person whose condition need not be a substantial impediment may become "handicapped," if he or she is labeled and treated as "handicapped" by members of society (Burgdorf, 1975).

Exclusion from equal educational opportunity for handicapped children occurs not only when educational facilities refuse them admittance or place them on long waiting lists. Exclusion may also occur when education is "inadequate or unresponsive to [a child's] needs" or where the program "is of such a nature that [the child] cannot substantially profit from it and therefore receives few or none of the intended benefits of education" (Turnbull & Turnbull, 1978). Misclassifying children as handicapped when they are not or classifying them inaccurately with respect to their handicaps can also deny them the right to equal educational opportunity (Turnbull & Turnbull, 1978).

At the same time that federal and state courts were debating the concept of the right to an education, a second line of litigation began to focus on the identification, evaluation, and placement of handicapped children. Evidence was developed that supported the claim that schools too often assigned labels, subjected children to individual psychological testing, and altered their educational status without just reason or adequate supporting data and often without parental knowledge, permission or participation.

Two landmark decisions in particular shed light upon the variety of problems associated with the testing and classification of handicapped students. In January 1970, *Diana* v. *State Board of Education* was filed in the District Court of Northern California on behalf of nine Mexican-American students who had been placed in classes for the mentally retarded on the basis of intelligence tests given in English. When the plaintiffs were retested in Spanish, however, seven of the nine scored higher than the IQ cutoff point for placement in these classes. On the basis of this information, the plaintiffs argued that such tests placed too much emphasis on verbal skills requiring facility with the English language, that the test questions were culturally biased, and that the tests were standardized only on white, native-born Americans.

A consent agreement resolved the case. Under the agreement, the state of California was required to (1) retest and reevaluate all Mexican-American and Oriental children then in classes for the educable mentally retarded; (2) administer and use tests in the primary language of the child; and (3) undertake immediate efforts to develop and standardize an appropriate intelligence test.

In a similar fashion, in 1971, lawyers for six black elementary school-age children in San Francisco filed a class suit alleging that the children had been inappropriately classified and placed in classes for the educable mentally retarded on the basis of testing procedures that failed to recognize their unfamiliarity with the white middle-class culture. The plaintiffs in *Larry P.* v. *Riles* (1972) argued that their misplacement in classes for the educable mentally retarded carried with it a stigma and "life sentence of illiteracy" (*Larry P.* v. *Riles*, 1972). Statistics were submitted to the court that clearly demonstrated that not only the San Francisco Unified School District but the state of California as well had a disproportionate number of black children enrolled in programs for the educable mentally retarded.

On June 20, 1972, the court prohibited the San Francisco Unified School District

> from placing black students in classes for the educable mentally retarded on the basis of criteria which places primary relevance on the results of I.Q. tests as they are currently administered, if the consequence of use of such criteria is racial imbalance in the composition of such classes (*Larry P.* v. *Riles*, 1972).

Based upon the precedents that evolved from *Diana*, *Larry P.*, and other cases concerning the problems of inappropriate placement, labeling, and the disproportionate numbers of minority group children being placed in special educa-

tion programs, the states as well as the federal government began to pay particular attention to this issue. Massachusetts, for example, passed regulations that required department-approved tests to be "as free as possible from cultural or linguistic bias or whenever necessary, separately evaluated with reference to the linguistic and cultural group to which the child belongs" (Massachusetts General Laws, 1971). The Congress likewise reacted to these problems. While P. L. 92-142 may not provide a comprehensive procedure of remedy with respect to potential discrimination, it does make four clear and important stipulations in the direction of such remedy. The law insists that state and local education agencies insure, at a minimum, that

- tests and other evaluation materials are provided and administered in the child's native language or other mode of communication.
- tests are selected and administered so as best to ensure that when a test is administered to a child with impaired sensory, manual, or speaking skills, the test results accurately reflect the child's aptitude or achievement level rather than reflecting the child's impaired sensory, manual, or speaking skills (unless those skills are the factors which the test purports to measure).
- no single procedure is used as the sole criterion for determining an appropriate educational program for a child.
- the evaluation is made by a multidisciplinary team or group of persons, including at least one teacher or other specialist with knowledge in the area of suspected disability.

The Right To Be Educated in the Least Restrictive Environment

The concept of the right to education in the least restrictive environment undoubtedly has its origin in a fundamental ethos of the American people: stated quite simply, it is better to be with your peers than to be apart from them. As the concept has taken on legal dimensions through legislation and court decrees respecting handicapped children, the mandate of least restrictive environment has nonetheless acknowledged the existence of a wide continuum of educational placements, ranging from the least restrictive (regular classroom with nonhandicapped children) to the most restrictive (special school or institution).

The issue becomes the attitude taken toward that continuum of special education services. Johnson comments as follows:

> In essence, this doctrine provides that, when government pursues a legitimate goal that may involve the restricting of fundamental liberty, it must do so using the least restrictive alternative available. Applied to education, courts have ruled in principle that special education systems or practices are inappropriate if they remove children from their expanded peer group without benefit of constitutional safeguards. Placement in special environments for educational purposes can, without appropriate safeguards, become a restriction of fundamental liberties. It is required, then, that substantive efforts be made by educators to maintain handicapped children with their peers in a regular education setting, and that the State (as represented by individual school districts) bear the burden of proof when making placements or when applying treatments which involve partial or complete removal of handicapped children from their normal peers (Johnson, 1976).

The very earliest judicial cases respecting the right to education of handicapped children included affirmation of the least restrictive educational setting. For example, the *PARC* consent decree declared:

> It is the Commonwealth's obligation to place each mentally retarded child in a free, public program of education and training appropriate to the child's capacity, within the context of a presumption that, among the alternative programs of education and training required by statute to be available, placement in a regular public school class is preferable . . . to placement in any other type of program of education and training. (*Pennsylvania Association for Retarded Children* v. *Commonwealth of Pennsylvania*, 1972)

Concurrent with the affirmation of this principle by judicial decree, the least restrictive doctrine was gradually taking hold in state-level policy. For instance, in October 1975, one month before enactment of P. L. 94-142, the National Education Association reported that in a survey of 44 of their state affiliates, "twenty-two or 50% reported that there was a state law or regulation in effect that handicapped children are

to be placed in regular classes at least some of the time" (National Education Association, 1975).

For pure clarity and thoroughness, the statutory definition of least restrictive educational environment as it appears in a 1972 Tennessee statute provides a model:

> To the maximum extent practicable, handicapped children shall be educated along with children who do not have handicaps and shall attend regular classes. Impediments to learning and to the normal functioning of handicapped children in the regular school environment shall be overcome by the provision of special aids and services rather than by separate schooling for the handicapped. Special classes, separate schooling or other removal of handicapped children from the regular educational environment, shall occur only when, and to the extent that the nature or severity of the handicap is such that education in regular classes, even with the use of supplementary aids and services, cannot be accomplished satisfactorily (Tennessee Code Annotated, 1973).

P. L. 94-142 speaks in a similar vein respecting least restrictive environment. The law requires that all handicapped children "to the maximum extent appropriate" shall be educated "with children who are not handicapped." Furthermore, this act mandates that special classes, separate schooling, or other removal from the regular educational environment should occur only when "the nature or severity of the handicap is such that education in the regular class with the use of supplementary aids and services cannot be achieved satisfactorily."

Finally, Ballard speaks to the essential considerations in the federal P. L. 94-142 least restrictive mandate.

> It is critical to note what this provision is not:
>
> - It is not a provision for mainstreaming. In fact, the word is never used.
> - It does not mandate that all handicapped children will be educated in the regular classroom.
> - It does not abolish any particular educational environment, for instance, educational programming in a residential setting.
>
> It is equally critical to note what this provision does mandate:
>
> - Education with nonhandicapped children will be the governing objective "to the maximum extent appropriate."
> - The IEP will be the management tool toward achievement of the maximum least restrictive environment and therefore shall be applied within the framework of meeting the "unique needs" of each child.
> - The IEP document(s) must clearly "show cause" if and when a child is moved from the least restrictive to a more restrictive environment. The statute states that the following component must be included in the written statement accompanying the IEP: ". . .and the extent to which such child will be able to participate in regular educational progams . . ." (Refer to Section 612(5)(B) of the Act.) (Ballard, 1978).

The Right to Procedural Due Process of the Law

A history of often arbitrary and capricious behavior in educational decision-making for handicapped children coupled with the all too common practice of totally excluding parents from that process led irrevocably to court decisions and state legislation guaranteeing due process procedures for both the children and their parents or guardians. Due process as mandated by many of the states, and finally by the federal government, evolved in such a manner as to encompass nearly all issues relevant to identification, evaluation, and placement.

The first, and perhaps the most precise requirement of due process procedures accompanied the landmark consent decree in the case of *PARC* v. *Commonwealth of Pennsylvania* (1972). That decree included nothing less than a 23 step procedure as the foundation of a due process mechanism. The basis for this ruling, as well as for all subsequent judicial and legislative requirements, lies in the due process clauses of the Fifth and Fourteenth Amendments to the U.S. Constitution.

In the federal Education Amendments of 1974 (P. L. 93-380), the Congress, following upon the development of laws or administrative policy respecting the guarantee of due process in at

least 25 of the states, took action to establish a national base. The Congress ordered an immediate assurance from the states that procedures were in place to guarantee that all handicapped children within each state and their parents be assured of procedural safeguards in all decisions regarding identification, evaluation, and educational placement of handicapped children.

In the successor act, P. L. 94-142, these due process safeguards and the required procedural ingredients are restated and refined with a view toward the following objectives:

- To strengthen the rights of all involved.
- To conform more precisely to court decrees.
- To clarify certain aspects of the earlier (P. L. 93-380) statutes.
- To guarantee the rights of all parties with respect to potential court review.
- To insure maximum flexibility in order to conform to the varying due process procedures among the states.

Under the terms of P. L. 94-142, all states desirous of receiving federal assistance are required to establish and maintain procedures that will include, but not be limited to:

1. an opportunity for the parents or guardian of a handicapped child to examine all relevant records with respect to the identification, evaluation, and educational placement of the child . . . and to obtain an independent educational evaluation of the child;
2. procedures to protect the rights of the child whenever the parents or guardian of the child are not known or are unavailable, or when the child is a ward of the state, including the assignment of an individual (who shall not be an employee of the state educational agency, local educational agency, or intermediate educational unit involved in the education or care of the child) to act as a surrogate for the parents or guardian;
3. written prior notice to the parents or guardian of the child whenever such agency or unit proposes to initiate or change, or refuses to initiate or change the identification, evaluation, or educational placement of the child;
4. procedures designed to assure that [this] notice . . . fully informs the parents or guardian, in the parents' or guardian's native language;
5. an opportunity to present complaints with respect to any matter relating to the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education to such child (Zettel & Abeson, 1978).

Moreover, when a complaint has been filed respecting any of the aforementioned, the parent or guardian or the public agency has the opportunity for an impartial due process hearing at which all persons concerned are guaranteed (a) the right to be accompanied and advised by counsel and by individuals with special knowledge or training with respect to the problems of handicapped children; (b) the right to present evidence and confront, cross-examine, and compel the attendance of witnesses; (c) the right to a written or electronic verbatim record of the hearing; and (d) the right to written findings of fact and decisions (Zettel & Abeson, 1978).

The Right to a Free Education

As has already been mentioned, there have been a number of instances in which certain handicapped children have been denied an appropriate education because their families did not have sufficient income to pay for the costs of private education. In the early 1970's, for example, New York State provided a $2,000 maximum state grant for the instruction of handicapped children. If there was no adequate public program available, and if the alternative private educational placement cost more than this amount, the remaining expenses usually had to be assumed by the child's parents. At this point, from a judicial perspective, it was often argued that the greatest burden was thus placed upon those families with the least amount of resources—or on members of racial and ethnic minorities (Blatt, 1972). In this way, quality of educational opportunity became linked with an individual's ability to pay for additional educational services.

The courts made it clear that this was not to be the case. *PARC*, *Mills*, and *Le Banks* v. *Spears* (1973) specified that what must be provided is *free* public education. Much of this judicial thinking concerning a handicapped child's right

to a free public education can be summed up by the following statement:

> It is the child who is given the right to an education, not the parent, and his right should not be abridged or limited by the willingness of a parent to become financially liable for the education. To limit the right to an education in this manner would discourage many parents from seeking the appropriate facilities for their child (In re Downey, 1973).

P. L. 94-142 emphasizes that all handicapped children must be provided with a free, appropriate public education at no cost to their parents or guardians. If it is deemed best by all appropriate parties that a handicapped child would be best served by a private school or facility, the cost of such a program placement (including tuition, transportation, nonmedical care, and room and board where necessary) must be assumed by the public sector. P. L. 94-142 thus reflects a strong conviction that no handicapped child (or parents of a handicapped child) who is placed by a local educational agency in a private school or institution should be financially penalized because of the school system's inability to provide the appropriate special educational services needed to meet the unique needs of the child (Zettel & Abeson, 1978).

The Right to an Appropriate Education

While all of the policy developments just discussed are of major constructive significance, the public mandate that all handicapped children are entitled to an education appropriate to their unique needs is undoubtedly the most significant. This had been a goal long dreamed of and often seriously discussed respecting the education of all American children, but a goal that had seldom been implemented on any notable scale.

Suffice it to say that prior to enactment of P. L. 94-142, state statutes and judicial decrees respecting the education of handicapped children were already replete with such characterizations as "appropriate," "suitable," and "specialized instruction." Massachusetts required that each child with special needs be provided an individualized education program (Massachusetts Department of Education, 1974). Illinois regulations required that a multidisciplinary conference "develop an educational plan which indicates specific objectives to be attained by the child" (Illinois State Statutes, 1973). Wisconsin statutes provided that when a child is recommended for special education, an educational program fitted to the child's needs should also be recommended (Wisconsin Statutes Annotated).

From the standpoint of federal policy, special education may in fact be remembered as the standard bearer in the promotion of increasing federal attention to the need for individualized education programs for at least all "vulnerable" children, handicapped and nonhandicapped. For example, P. L. 93-380 amendments to Title I of the Elementary and Secondary Education Act (supplementary assistance to economically disadvantaged children) carry a strong recommendation for individualized programs for all children served under that Title. Inclusion of this provision occurred prior to enactment of P. L. 94-142. Moreover, mandated individualized programs took hold in other segments of federal public policy prior to enactment of P. L. 94-142. The Vocational Rehabilitation Act of 1973 (P. L. 93-112) and the Developmentally Disabled Assistance and Bill of Rights Act of 1975 (P. L. 94-103) both contain requirements for individualized habilitation programs.

It may safely be asserted that the requirement of a written individualized education program for all handicapped children is the centerpiece of P. L. 94-142. It may also safely be asserted that the Congress developed a very strong conviction that this requirement was crucial if the stated purpose of P. L. 94-142 was to be achieved, namely, that all handicapped children be provided with an "appropriate public education . . . designed to meet their unique needs." There is no better illustration of that strong conviction than the following definition which the Congress adopted respecting the essential ingredients of each child's written individualized education program:

> The term "individualized education program" means a written statement for each handicapped child developed in any meeting by a representative of the local educational agency . . . who shall be qualified to provide, or supervise the provision of, specially designed instruction to meet the unique needs of handicapped children, the teacher, the parents or guardian of such child, and, whenever apropriate, such child,

which statement shall include (a) a statement of the present levels of educational performance of such child, (b) a statement of annual goals, including short-term instructional objectives, (c) a statement of the specific educational services to be provided to such child, and the extent to which such child will be able to participate in regular educational programs, (d) the projected date for initiation and anticipated duration of such services, and (e) appropriate objective criteria and evaluation procedures and schedules for determining, on at least an annual basis, whether instructional objectives are being achieved (Ballard & Zettel, 1977).

A review of the Congressional legislative history indicates a consistent recurrence of the following premises among House and Senate members during P. L. 94-142 deliberations:

- Each child requires an educational blueprint custom-tailored to achieve his or her maximum potential.
- All principals in the child's educational environment, including the child, should have the opportunity for input in the development of an individualized program of instruction.
- Individualization means specifics and timetables for those specifics, and the need for periodic review of those specifics—all of which produce greatly enhanced fiscal and educational accountability (Ballard & Zettel, 1977).

Concluding Statement

As we indicated in our introduction, the intended purpose of this chapter was to provide the reader with a basic understanding of P. L. 94-142, its origins, and its history, and to describe the minimum standards the law prescribes for state and local education agencies regarding the education of handicapped children. As a democratic society, we have often argued that, given the resources and the authority, we could dramatically improve the lives of our children. There is little if anything in P. L. 94-142 that does not reflect the highest ideals of American education. The translation of ideals into reality, however, is often quite difficult. P. L. 94-142 in this sense is a great challenge, but we must not be fooled that any single federal law or decree can provide an instant cure for all of the ills that have befallen and will continue to befall handicapped children. P. L. 94-142 in this context must be regarded as only a single vehicle for beginning to rectify many of these problems. Let us, therefore, be modest and practical in our expectations for the law. It was Justice Benjamin Cardozo who offered the statement, "The law never is, the law is always about to be."

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CHAPTER 3

Implementing the Right to a Free Appropriate Public Education

JEFFREY J. ZETTEL

While many individuals enthusiastically applauded the passage of P. L. 94-142 and openly proclaimed it to be the new "Bill of Rights for Handicapped Children," others, at least from an administrative perspective, cautioned that the implementation of a statute as detailed and prescriptive as this law could be problematic. According to Dr. Edwin Martin, former Assistant Secretary for Special Education and Rehabilitative Services:

> There are a variety of real and substantial problems in implementing a law which seeks to provide an optimum educational program in an educational system which is in itself imperfect in many ways, and which has had a long history of failing to fully accommodate handicapped children. In many ways, P. L. 94-142 hopes to achieve a higher level of responsiveness to parents and handicapped children than the system has ever provided to anyone. (Martin, 1979, p. 1)

As of this writing, P. L. 94-142 has been in effect for a little over four years, and many people feel it is entirely too early to attempt to assess the overall impact of this historic piece of federal legislation on our nation's educational system. From a scholarly perspective, however, it would not be presumptuous to examine the results of a number of selected studies and reports in order to gain an insight into some of the successes and difficulties in implementing this law that state and local education agencies have reported. Therefore, this chapter will attempt to analyze the Act from the perspective of five of its basic tenets: zero reject, individualized education programs, least restrictive environment, nondiscriminatory testing and evaluation, and due process of law.

Zero Reject

P. L. 94-142 specifies that recipients of federal funds for the education of the handicapped may exclude no handicapped child from receiving an education, and that all such agencies must follow a policy of zero reject (Turnbull & Turnbull, 1978). In other words, the law designates that all handicapped children, regardless of the degree of their disability, are entitled to a free appropriate public education, including any special education and related services necessary to meet their unique educational needs. Furthermore, the law required that such an education be made available by September 1, 1980, to all handicapped children aged 3 through 21.

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One way to determine how successful P. L. 94-142 has been in providing special education and related services to eligible handicapped children is to examine the law relative to the requirement of zero reject, specifically from four broad perspectives:

1. The actual increase in number of handicapped children served since P. L. 94-142 was enacted.
2. Changes within the overall handicapped population as related to changes in the types of handicapped children served.
3. Variations between the states as to the percentage of the total school population identified as handicapped.
4. The number of handicapped children who are as yet unserved.

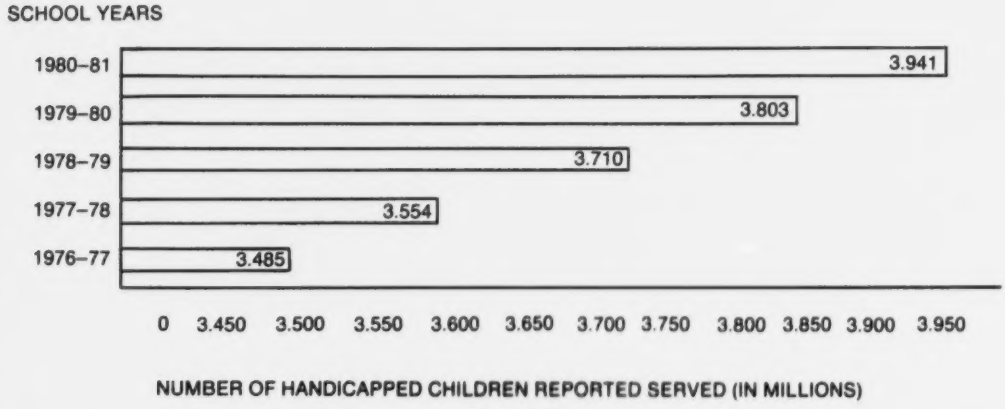
Increase in Number of Children Served

First, it would be useful to compare how many handicapped children are currently receiving special education and related services under P. L. 94-142 to the number of children served during 1976–77, the first school year after the law was enacted.

As can be seen from Figure 1, state education agencies (SEA's) reported serving nearly 3.95 million handicapped children under P. L. 94-142 during the school year 1980–81. This figure represents a 13% increase, or an additional 456,612 handicapped children served since the Act was first enacted in 1975. What is even more impressive is the fact that this increase has taken place during a period when the overall school-age population in this country decreased by well over 6%, which normally would have resulted in a loss of between 140,000 and 200,000 special education students.

One highly significant fact not depicted by Figure 1 is the dramatic rate of growth which occurred within two specific age categories of the handicapped population: the preschool and 18–21 age groups. According to the annual child count figures submitted by SEA's to the U.S. Department of Education on December 1, 1980, 237,090 handicapped children aged 3 through 5 received special education and related services during school year 1980–81. This represents an additional 5,275 preschool-aged handicapped children reported served over the previous year's total, and nearly an 18% increase, or 40,867 children, since the law was first enacted. Likewise, 141,717 handicapped stu-

FIGURE 1
Number of Handicapped Children Reported Served Under P.L. 94-142
1976–1981



dents aged 18 through 21 were also provided services during 1980–81, representing a 17,189 student increase over the previous year.

There can be little argument, therefore, that we are providing a publicly supported education to more handicapped children than ever before. In terms of the increase in real numbers served, the concept of zero reject appears to be quite successful. However, the notion of zero reject should not be examined solely in terms of overall population growth, but from a second, equally important perspective—that of the internal changes that have taken place within the handicapped population itself.

Changes Within the Handicapped Population

Table 1 compares the distributions of the categories of handicapping conditions that were reported served by SEA's during school years 1976–77 and 1980–81. As illustrated by this table, the percentages of four subpopulations of handicapped children (i.e., the visually handicapped, deaf or hard of hearing, orthopedically impaired, and other health impaired), while slightly decreasing over the past 5 years, have remained relatively stable in comparison to the handicapped population in general. Two categories of disabled students, on the other hand, have decreased. The number of children labeled mentally retarded declined by over 12%, or by 119,656 students; and those identified as speech impaired decreased by 124,874, or by nearly 10%. Students classified as emotionally disturbed increased by over 24% during this period. Even with the addition of 68,388 individuals, this particular subpopulation remains the only disability area that has not reached the 2% prevalence level anticipated by the Congress and most experts in 1974. Finally, it can be seen that an additional 657,922 children have been identified as having a learning disability since 1976, an 83% increase. Whereas in school years 1976–77, 1977–78, and 1978–79, the largest subpopulation of handicapped students were those having speech impairments, beginning in 1979–80, the largest number of handicapped children now served are the learning disabled.

Table 1 also contrasts the number of handicapped children reported served under both P. L. 94-142 and P. L. 89-313, Federal Assistance for Children in State-Operated or State-Supported Schools (1965). While the reported number of handicapped children identified under P. L. 94-142 has risen significantly, the number served under P. L. 89-313 has for the most part remained constant. A closer examination of the handicapped subpopulations served under P. L. 89-313, however, reveals some interesting trends. For example, the proportion of visually handicapped and deaf or hard-of-hearing children served by this program has remained relatively constant over the past half decade. The number of mentally retarded and health impaired children, on the other hand, has decreased significantly, while the categories of emotionally disturbed and orthopedically impaired have increased. It is also interesting to note that in 1976–77 no state education agencies reported serving learning disabled or speech impaired students under P. L. 89-313 monies, but during the 1980–81 school year over 15,000 learning disabled and 11,000 speech impaired children were supported by these funds.

Variations Between States

A third way to explore the success of the implementation of zero reject would be to determine if there is any significant variation between the states with regard to the percentage of the total school population each identifies as being handicapped. As can be seen from Table 2, such variations do indeed exist.

Table 2 illustrates that nearly 4.2 million handicapped children aged 3 through 21 were reported as receiving special education and related services during school year 1980–81. On an aggregate basis, this means that approximately 8.7% of the total school-age population in this country was identified and served as handicapped. However, the Table shows considerable variation among the states as to the percentage of the school population each identified as being handicapped. For example, Massachusetts, Delaware, Alaska, Vermont, and Maryland identified over 11% of their school enrollments as handicapped; others, such as the District of Columbia and the Bureau of Indian Affairs (BIA), indicated that they served less than 6%.

The discrepancy that exists between the states and territories with regard to the percentage of individuals served within each of the subclassifications of handicapping conditions is also depicted in Table 2. For example, in Alabama and in the Virgin Islands, children identified as

TABLE 1
Distributions of Handicapping Disability Categories Served
Under P. L. 94-142 And P. L. 89-313 During School Years 1976–77 and 1980–81

Handicapping Condition	School Year 1976–77[1]				School Year 1980–81[2]				% of Change of HDCP 1976–81	% School-age population 1980–81
	PL 94-142	PL 89-313	Total	% HDCP[3]	PL 94-142	PL 89-313	Total	% HDCP		
Learning Disabled	797,213	0	797,213	21.5%	1,439,826	15,309	1,455,135	34.7%	+ 13.2%	3.0%
Speech Impaired	1,302,666	0	1,302,666	35.1%	1,166,706	11,086	1,177,792	28.1%	– 7.0%	2.4%
Mentally Retarded	838,059	131,487	969,546	26.1%	738,509	111,381	849,890	20.3%	– 5.8%	1.8%
Emotionally Disturbed	252,694	30,378	283,072	7.6%	312,632	38,828	351,460	8.3%	+ 0.7%	.7%
Other Health Impaired	125,321	16,095	141,416	3.8%	94,536	4,710	99,246	2.3%	– 1.5%	.2%
Orthopedically Impaired	78,583	8,425	87,008	2.3%	48,315	12,380	60,695	1.4%	– .9%	.1%
Deaf/Hard of Hearing	61,873	27,522	89,395	2.4%	55,681	26,903	82,584	1.8%	– .6%	.2%
Visually Handicapped	28,349	9,925	38,274	1.0%	23,670	9,961	33,631	.8%	– .2%	.06%
TOTALS	3,484,756	223,832	3,708,588	99.8%[4]	3,748,478[5]	230,558[6]	3,979,036	97.7%[4]		

[1]Figures from Bureau of Education for the Handicapped/U.S. Office of Education, Washington, D.C., 1977.
[2]Figures from the U.S. Office of Special Education, Department of Education, Washington, D.C., July 29, 1981.
[3]Percentage of the Handicapped Population.
[4]Percentages do not total to 100 because they are rounded off.
[5]Reported child count for school year 1980–81 includes an additional 2,955 deaf-blind children and 71,688 multi-handicapped. Total handicapped children served under P. L. 94-142 was 4,185,076.
[6]Reported child count for school year 1980–81 includes an additional 1,006 deaf-blind children and 12,144 multi-handicapped. Total handicapped children served under P. L. 89-313 was 243,708.

having mental retardation as their principal disability comprise over 45% of the total handicapped population. In Utah, on the other hand, the percentage of handicapped children identified as mentally retarded is only 8.8%. Similarly, Hawaii reported that during 1980–81 nearly 63% of the handicapped children served were learning disabled, while the Virgin Islands and New Mexico identified less than 20% of their students as learning disabled during this period.

The underlying reasons for such variations between states are many: differences in definitions and assessment procedures; differences in state financial reimbursement plans; the perceived and/or real influence of enforcement techniques applied by SEA's; and methods of locating potential handicapped students. From the perspective of the requirement of zero reject, the individual factors which result in discrepancies between states obviously need to be carefully monitored. The end result should be that all handicapped children, regardless of extraneous circumstances, must be afforded the opportunity to receive a free appropriate public education.

Number of Handicapped Children As Yet Unserved

Another method of assessing how successful we have been in advancing the requirement of zero reject is to determine precisely how many handicapped children are *not* receiving a free appropriate education. In order to do this, we would simply have to find out how many handicapped children there are in this country and then subtract those who are receiving special education and related services. As might be anticipated, however, discovering the exact number of handicapped children residing in this country is not an easy task. Estimates of the prevalence of this population range between 4.9 to 10.2 million children and youth. Even the Stanford Research Institute (SRI), after reviewing nearly 400 such prevalence studies, concluded "It would appear that no single set of prevalence figures can be accepted as fact (Stearns, Norwood, Kaskowitz, & Mitchell, 1977).

However, based on the current child counts of the five states reporting the largest proportions of disabled children served, the U.S. Office of Special Education (OSE) projected "There could be as many as 5.8 million school-age handicapped children in the United States" (Danielson & Paller, 1978). This figure, according to OSE, is "consistent both with [its] projections made prior to the enactment of P. L. 94-142 and with the Act's percent limitation on the proportion of children who can be counted for funding."

Using this estimate of 5.8 million school-aged handicapped children and recalling that SEA's reported serving only approximately 4.2 million handicapped children during the 1980–81 school year, the question that must be asked is: Why then are we presently not serving all of these children?

Appearing before the House Select Subcommittee on Education, Frank Bowe, former Director of the American Coalition of Citizens with Disabilities (ACCD), stated that there were a number of specific reasons why the current child count figures do not, in his opinion, accurately reflect the true number of handicapped children receiving or in need of special education. According to Bowe (1979), much of this inaccuracy appears to be generated by the following conditions.

- Administrative errors are rampant, with numerous school systems reporting zero percent or very low proportions of handicapped children purely by error.
- Children in special institutions generally are excluded from the count.
- Those served in other federal programs may not be counted although they receive services under the Act.
- Many children with disabilities are in regular classrooms and, because they are not identified as in need of special services, are not receiving them and are not counted.
- If services are not available, children may not be counted.
- There are differences in diagnosis: one district's standards may not be another's, with inevitable differences in the numbers of children counted.
- The relatively low level of federal funding means that for each child identified, significantly higher state and local expenditures are required.

Prior to the enactment of P. L. 94-142 in 1975, the Congress estimated that more than half of the handicapped children in the United States were not receiving appropriate services which would afford them full equality of educational opportunity. After only four years, a free appro-

Table 2
Number of Handicapped Children Reported Served
Under P.L. 94-142 and P.L. 89-313
for School Year 1980-81[1]

STATE	MENTALLY RETARDED		HARD OF HEARING		DEAF		SPEECH IMPAIRED		VISUALLY HANDICAPPED		EMOTIONALLY DISTURBED	
	Number	*Percentage of State's Handicapped Population*	*Number*	*Percentage of State's Handicapped Population*	*Number*	*Percentage of State's Handicapped Population*	*Number*	*Percentage of State's Handicapped Population*	*Number*	*Percentage of State's Handicapped Population*	*Number*	*Percentage of State's Handicapped Population*
Alabama	34,840	45.6	457	0.5	650	0.8	15,079	19.7	481	0.6	3,961	5.1
Alaska	734	7.0	166	1.6	110	1.0	2,849	27.5	33	0.3	288	2.7
Arizona	6,592	12.8	559	1.0	409	0.7	11,247	21.9	370	0.7	4,959	9.6
Arkansas	17,449	35.5	387	0.7	381	0.7	12,117	24.6	312	0.6	535	1.0
California	38,947	10.7	2,593	0.7	3,920	1.0	95,656	26.3	3,332	0.9	25,932	7.1
Colorado	6,423	13.1	922	1.8	0	0.0	9,954	20.4	350	0.7	6,547	13.4
Connecticut	7,940	11.8	589	0.8	786	1.1	5,908	23.7	654	0.9	12,287	18.3
Delaware	2,405	16.6	60	0.4	180	1.2	2,085	14.4	130	0.9	2,687	18.6
Dist. of Col.	1,318	20.8	44	0.6	3	0.0	2,136	33.8	66	1.0	724	11.4
Florida	27,978	19.3	0	0.0	2,099	1.4	42,270	29.2	806	0.5	13,525	9.3
Georgia	30,021	26.8	932	0.8	1,102	0.9	27,541	24.5	809	0.7	16,395	14.6
Hawaii	1,807	15.0	169	1.4	155	1.2	1,369	11.3	70	0.5	402	3.3
Idaho	2,759	16.3	181	1.0	203	1.2	3,823	22.7	191	1.1	522	3.1
Illinois	51,626	20.3	2,417	0.9	2,890	1.1	80,480	31.6	2,190	0.8	32,094	12.6
Indiana	26,666	26.9	791	0.7	575	0.5	43,476	43.9	518	0.5	2,441	2.4
Iowa	12,643	20.7	681	1.1	371	0.6	15,753	25.8	282	0.4	4,025	6.5
Kansas	7,413	18.2	442	1.0	313	0.7	13,301	32.7	252	0.6	3,061	7.5
Kentucky	23,177	32.7	570	0.8	423	0.5	24,278	34.3	438	0.6	2,160	3.0
Louisiana	19,164	23.1	505	0.6	1,212	1.4	22,911	27.6	477	0.5	5,164	6.2
Maine	5,200	20.2	265	1.0	200	0.7	5,957	23.2	134	0.5	4,446	17.3
Maryland	11,060	11.2	1,055	1.0	869	0.8	26,443	26.7	692	0.7	3,445	3.4
Massachusetts	26,834	18.9	5,651	3.9	847	0.5	40,959	28.9	1,131	0.7	24,098	17.0
Michigan	29,882	19.1	2,850	1.8	282	0.1	48,937	31.3	1,071	0.6	19,618	12.5
Minnesota	14,239	17.5	1,312	1.6	181	0.2	21,189	26.1	435	0.5	4,503	5.5
Mississippi	18,593	39.9	320	0.6	323	0.6	14,847	31.9	251	0.5	369	0.7
Missouri	22,076	21.8	613	0.6	642	0.6	33,376	33.0	409	0.4	6,578	6.5
Montana	1,615	12.0	165	1.2	145	1.0	4,081	30.4	185	1.3	479	3.5
Nebraska	6,610	21.5	508	1.6	179	0.5	9,371	30.4	202	0.6	1,655	5.3
Nevada	1,217	10.3	82	0.6	111	0.9	3,022	25.6	84	0.7	499	3.8
N. Hampshire	1,787	14.2	144	1.1	117	0.9	1,774	14.1	224	1.7	1,086	8.6
New Jersey	16,537	10.4	1,062	0.6	1,262	0.7	64,131	40.4	1,392	0.8	14,974	9.4
New Mexico	3,139	13.0	290	1.2	171	0.7	5,157	21.4	200	0.8	1,976	8.2
New York	41,675	18.1	1,502	0.6	3,765	1.6	41,994	18.2	2,209	0.9	45,797	19.9
North Carolina	39,986	33.5	1,319	1.1	936	0.7	26,347	22.1	768	0.6	4,550	3.8
North Dakota	1,809	19.1	103	1.0	84	0.8	3,148	33.3	75	0.7	252	2.6
Ohio	62,682	30.1	0	0.0	2,689	1.2	63,783	30.6	1,005	0.4	5,164	2.4
Oklahoma	13,372	21.0	316	0.4	549	0.8	19,379	30.4	352	0.5	689	1.0
Oregon	5,518	12.3	746	1.6	868	1.9	11,580	25.8	571	1.2	2,450	5.4
Pennsylvania	49,202	24.8	3,296	1.6	1,647	0.8	71,851	36.2	2,138	1.0	13,911	7.0
Rhode Island	1,974	11.2	103	0.5	147	0.8	3,368	19.1	62	0.3	1,166	6.6
South Carolina	24,941	35.6	800	1.1	303	0.4	19,174	27.4	527	0.7	5,256	7.5
South Dakota	1,260	12.4	350	3.4	108	1.0	4,993	49.2	49	0.4	330	3.2
Tennessee	21,945	23.0	1,575	1.6	680	0.7	32,339	33.9	724	0.7	2,814	2.9
Texas	28,608	10.3	396	0.1	4,381	1.5	67,702	24.5	1,629	0.5	13,463	4.8
Utah	3,194	8.8	272	0.7	460	1.2	7,369	20.5	302	0.8	9,698	27.0
Vermont	3,095	25.6	146	1.2	165	1.3	2,483	20.5	124	1.0	436	3.6
Virginia	18,425	18.8	845	0.8	784	0.8	32,109	32.7	1,860	1.8	6,079	6.2
Washington	10,799	17.0	477	0.7	633	0.9	14,868	23.4	398	0.6	5,201	8.1
West Virginia	11,508	31.4	228	0.6	219	0.5	10,823	29.5	253	0.6	1,004	2.7
Wisconsin	14,668	20.9	691	0.9	653	0.9	16,986	24.2	451	0.6	8,575	12.2
Wyoming	1,050	9.6	148	1.3	48	0.4	3,100	28.6	47	0.4	767	7.0
A. Samoa	69	31.3	8	3.6	13	5.9	3	1.3	2	0.9	0	0.0
B.I.A.	612	13.2	133	2.8	12	0.2	869	18.7	25	0.5	224	4.8
Guam	919	44.0	32	1.5	67	3.2	444	21.2	34	1.6	65	3.1
N. Marianas	11	7.1	4	2.5	12	7.7	0	0.0	2	1.2	0	0.0
Puerto Rico	13,062	51.5	723	2.8	1,006	3.9	1,108	4.3	1,779	7.0	2,073	8.1
Trust Terr.	23	1.1	185	9.6	26	1.3	222	11.5	59	3.0	35	1.8
Virgin Islands	792	50.8	32	2.0	26	1.6	273	17.5	15	0.9	76	4.8
TOTALS	849,890	20.3	41,212	0.9	41,372	0.9	1,177,792	28.1	33,631	0.8	351,460	8.3

[1]Figures released by the U.S. Office of Special Education on July 29, 1981.

Table 2
(continued)

ORTHOPEDICALLY IMPAIRED		OTHER HEALTH IMPAIRED		LEARNING DISABLED		DEAF-BLIND		MULTI-HANDICAPPED		Total Number Handicapped Children Reported Served	Percent of School Age Population
Number	*Percentage of State's Handicapped Population*	*Number*	*Percentage of State's Handicapped Population*	*Number*	*Percentage of State's Handicapped Population*	*Number*	*Percentage of State's Handicapped Population*	*Number*	*Percentage of State's Handicapped Population*		
424	0.5	728	0.9	18,373	24.0	63	0.0	1,254	1.6	76,310	8.81
179	1.7	98	0.9	5,767	55.7	24	0.2	104	1.0	10,352	11.32
1,115	2.1	646	1.2	24,423	47.6	8	0.0	874	1.7	51,202	8.85
496	1.0	333	0.6	16,303	33.2	18	0.0	765	1.5	49,096	9.90
7,772	2.1	24,197	6.6	159,871	44.1	283	0.0	0	0.0	362,503	7.74
788	1.6	0	0.0	22,446	46.1	42	0.0	1,205	2.4	48,677	8.22
652	0.9	1,171	1.7	27,105	40.4	0	0.0	0	0.0	67,072	10.51
286	1.9	72	0.4	6,460	44.8	32	0.2	19	0.1	14,416	11.48
223	3.5	139	2.2	1,517	24.0	38	0.6	100	1.5	6,308	5.54
1,776	1.2	2,536	1.7	51,579	35.6	76	0.0	1,887	1.3	144,532	8.08
684	0.6	1,450	1.2	31,823	28.4	31	0.0	1,193	1.0	111,981	9.09
248	2.0	4	0.0	7,527	62.6	23	0.1	244	2.0	12,018	6.07
413	2.4	223	1.3	7,992	47.4	44	0.2	482	2.8	16,833	7.89
4,632	1.8	2,479	0.9	71,711	28.2	165	0.0	3,207	1.2	253,891	10.58
851	0.8	159	0.1	22,186	22.4	42	0.0	1,211	1.2	98,916	8.24
772	1.2	5	0.0	25,771	42.2	53	0.0	659	1.0	61,015	10.09
343	0.8	412	1.0	14,370	35.3	57	0.1	673	1.6	40,637	8.68
767	1.0	890	1.2	16,683	23.5	125	0.1	1,182	1.6	70,693	8.83
628	0.7	1,298	1.5	30,392	36.7	34	0.0	938	1.1	82,723	8.54
347	1.3	380	1.4	7,811	30.4	59	0.2	839	3.2	25,638	10.55
1,003	1.0	1,496	1.5	50,041	50.7	34	0.0	2,544	2.5	98,682	11.02
282	0.1	5,651	3.9	35,311	24.9	282	0.1	534	0.3	141,580	12.27
4,362	2.7	7	0.0	48,925	31.3	0	0.0	54	0.0	155,988	7.54
1,232	1.5	1,417	1.7	36,448	45.0	21	0.0	9	0.0	80,986	9.36
372	0.8	3	0.0	11,223	24.1	31	0.0	163	0.3	46,495	7.76
837	0.8	842	0.8	34,347	33.9	78	0.0	1,278	1.2	101,076	10.02
107	0.7	112	0.8	5,919	44.0	13	0.0	603	4.4	13,424	8.01
434	1.4	0	0.0	11,512	37.4	0	0.0	269	0.8	30,740	9.47
190	1.6	257	2.1	6,011	51.0	10	0.0	353	2.9	11,786	7.39
127	1.0	191	1.5	6,806	54.3	5	0.0	264	2.1	12,525	6.40
1,655	1.0	1,963	1.2	51,316	32.3	69	0.0	4,108	2.5	158,469	10.37
266	1.1	55	0.2	11,925	49.6	6	0.0	845	3.5	24,030	7.95
7,027	3.0	38,395	16.6	44,550	19.3	45	0.0	3,134	1.3	230,093	6.47
1,127	0.9	986	0.8	40,830	34.3	43	0.0	2,126	1.7	119,018	9.50
134	1.4	27	0.2	3,624	38.4	24	0.2	146	1.5	9,426	6.91
3,394	1.6	0	0.0	67,069	32.2	93	0.0	1,996	0.9	207,875	9.00
396	0.6	368	0.5	27,253	42.8	33	0.0	840	1.3	63,547	10.22
973	2.1	481	1.0	21,476	47.9	24	0.0	122	0.2	44,809	8.53
2,229	1.1	273	0.1	52,792	26.6	11	0.0	758	0.3	198,108	8.33
200	1.1	178	1.0	10,233	58.2	19	0.1	127	0.7	17,577	9.44
860	1.2	72	0.1	17,587	25.1	25	0.0	428	0.6	69,973	9.95
165	1.6	25	0.2	2,512	24.7	13	0.0	333	3.2	10,138	6.89
1,100	1.1	1,400	1.4	30,855	32.4	11	0.0	1,725	1.8	95,168	9.78
3,120	1.1	3,428	1.2	130,772	47.3	540	0.1	22,011	7.9	276,050	8.80
243	0.6	177	0.4	12,879	35.8	25	0.0	1,279	3.5	35,898	10.25
296	2.4	170	1.4	4,668	38.7	11	0.0	465	3.8	12,059	11.03
799	0.8	483	0.4	33,391	34.0	65	0.0	3,132	3.1	97,972	8.79
858	1.3	1,400	2.2	27,404	43.1	61	0.0	1,410	2.2	63,509	7.62
356	0.9	852	2.3	10,995	30.0	1	0.0	334	0.9	36,573	8.83
1,079	1.5	530	0.7	25,628	36.6	46	0.0	650	0.9	69,957	6.92
170	1.5	216	1.9	4,947	45.6	16	0.1	328	3.0	10,837	10.74
4	1.8	0	0.0	108	49.0	4	1.8	9	4.0	220	1.56
33	0.7	25	0.5	2,393	51.6	2	0.0	302	6.5	4,630	10.57
3	0.1	0	0.0	346	16.5	14	0.6	161	7.7	2,085	5.34
3	0.5	0	0.0	104	67.5	1	0.6	17	11.0	154	2.99
1,787	7.0	467	1.8	1,486	5.8	7	0.0	1,835	7.2	25,333	3.51
35	1.8	79	4.1	1,115	58.1	28	1.4	110	5.7	1,917	4.81
41	2.6	0	0.0	224	14.3	27	1.7	50	3.2	1,556	6.08
50,695	1.4	99,246	2.3	1,455,135	34.7	2,955	0.0	71,688	1.7	4,185,076	8.66

priate public education is being provided to over 4 million handicapped children, or nearly three-fourths of the estimated disabled child population. This fact, by itself, appears to be a most significant accomplishment. From a nationwide perspective, it should be noted, however, that state and local education agencies have made a number of additional accomplishments in implementing the zero reject requirement. For example, according to the U.S. Department of Education (1980):

- Between school years 1979–80 and 1980–81, 44 states and territories reported increases in the number of handicapped children they served under P. L. 94-142. Even though state-to-state differences continue in the percentage of individuals identified as handicapped, the Office of Special Education reported "that gap is closing . . . . Those reporting the highest percentages of handicapped children are holding relatively constant, while states reporting lower percentages of children are typically increasing their count.
- Since the enactment of P. L. 94-142, every state has either promulgated or developed new administrative rules to assure that all handicapped children within the state have the right to a free appropriate public education.
- Five states currently have a mandate to serve handicapped children beginning at birth; 16 states mandate services for handicapped children aged 3 through 5; 22 states mandate services at age 4 or 5; and the remaining 12 states mandate services by age 6.
- At the upper end of the scale, 30 states currently require services for handicapped students from the age of 18 either up to, or through, 21.
- During the past 5 years, attempts to provide appropriate educational services have been extended to include, not only those handicapped children served in the traditional state-operated programs for the mentally retarded, the emotionally disturbed, and the hearing and visually impaired, but also other groups of handicapped children who previously tended to be excluded. Services are not being provided to handicapped children and youth in correctional facilities, to handicapped children of minority groups (especially Blacks, Hispanics, American Indians, and Alaska Natives), and to handicapped migrant children.

The Individualized Education Program

A second statutory requirement which should be investigated to determine the relative success of the implementation of P. L. 94-142 is the requirement that every handicapped child who is receiving special education and related services be provided a written individualized education program (IEP). The Congressional intent and justification for the inclusion of this provision in the law was clearly indicated in a report to the U.S. House of Representatives by the U.S. Senate Subcommittee on the Handicapped (1975):

> The movement toward the individualization of instruction, involving the participation of the child and the parent, as well as all relevant educational professionals, is a trend gaining ever wider support in education, parental, and political groups throughout the Nation . . . . [This legislation] responds to 3 fundamental tenets: (a) each child requires an educational plan that is tailored to achieve his or her maximum potential; (b) all principals in the child's educational environment, including the child, should have the opportunity for input in the development of an individualized program of instruction; (c) individualization means specifics and timetables for those specifics, and the need for periodic review of those specifics—all of which produce greatly enhanced fiscal and educational accountability. (p. 137)

Although historically most educators have supported the premise of individualized instruction, the concept of the IEP as contained within P. L. 94-142 initially received considerable debate. Much of the early argument centered around what many perceived to be the continued overregulation or intrusion of the federal government into educational matters traditionally left to the responsibility of state and local educators. Additional concerns focused on the anticipated increase in paperwork and loss of teaching time that would result through the implementation of this provision. Finally, some prophesied a myriad of problems accompanying the shared decision making and involvement of parents in the IEP process.

However, a three-state investigation of the ability of local school districts to implement the federal requirements pertaining to IEP's (Stanford Research Institute, 1978) demon-

strated that the majority of these problems did not materialize during the first year that P. L. 94-142 was implemented:

> In general, the worst fears about implementing IEP requirements were not realized in most districts we visited. Although difficult problems exist, the main legislative requirements are being met. Students are being identified and assessed, IEP meetings are being held with the required participants (including parents) and written plans are being produced. (p. 38)

Other studies conducted between 1977 and 1979 verified that state and local education agencies continued to make substantial progress in meeting federal IEP requirements. A national survey of IEP's conducted in the spring of 1978 (Research Triangle Institute, 1980) found that nearly 95% of the handicapped students sampled had IEP's in place on December 1, 1978. The U.S. Office of Education (1979), Bureau of Education for the Handicapped (BEH, now the U.S. Office of Special Education) found state IEP policies to be consistent with federal requirements in all but one of the 16 states monitored during its 1978–79 Program Administrative Reviews (in-state visitations). Likewise, BEH representatives found IEP's to be in place in nearly all of the educational facilities (i.e., 269 out of 281) they visited. Finally, information provided to BEH from 44 SEA federal program coordinators indicated that, overall, the IEP process was much easier to implement the second year than during the first year, probably due to experience with the process.

While federal regulations specified much of the content and procedures to be used in developing IEP's, they also left considerable discretion to localities as to the individual format and specificity of these documents. To examine the basic characteristics and various processes that were being employed locally to develop IEP's, BEH contracted the Research Triangle Institute (RTI) to conduct a nationwide survey of IEP's in 1979. For purposes of the investigation, over 2,650 IEP's were analyzed from 208 school systems in 42 states. The composite developed as a result of this activity (Research Triangle Institute, 1980) included the following findings:

- IEP's were found to have an average (mean) length of about 5 pages. However, nearly half of them consisted of less than 3½ pages, and the majority were single-page, handwritten documents which were reasonably easy to read.
- Only one-third, or 36%, of the IEP's contained all 11 of the informational items required by the Act.* The two items that were least included were: (a) the proposed evaluation criteria and (b) a statement of the extent to which the handicapped child would be able to participate in the regular educational program.
- Only one-third, or 36%, indicated having on the IEP committee at least one representative from each of the three participating categories mandated by P. L. 94-142—teachers, local education agency administrative representatives, and parents or guardians.
- Although 75% of the parents discussed completed IEP's with school personnel, less than one-half, or 49%, were found to have verbally contributed to the IEP committee meeting.

Other studies documented the problem of meaningful parental particpation in the IEP process. A voluntary response survey conducted by the National Committee for Citizens in Education (1979) showed that 52% of the parents who responded from 46 states indicated that their child's IEP had been completed before they arrived for their IEP conference. Likewise, a nine-state investigation of the local implementation of P. L. 94-142 conducted by the Stanford Research Institute (1980) concluded that, while most of the districts sampled were meeting their legal obligations by involving parents in decisions related to their children's IEP's, this did not necessarily mean that the parents were making any substantial contributions in the decision-making process. Instead, the study found that most parents tended

*The 11 informational items required by the Act are: (1) a statement of the present level of educational performance; (2) a statement of annual goals; (3) short-term objectives; (4) a statement of the specific educational services to be provided; (5) the projected date for the initiation of these services; (6) the anticipated duration of the services; (7) a statement of the extent to which the child will be able to participate in the regular education program; (8) evaluation criteria; (9) proposed evaluation procedures; (10) proposed schedules for determining whether the objectives are met; and (11) assurances of at least an annual evaluation.

to agree with the placement and service recommendations made by the educational professionals. Data collected during the RTI study (1980) support this conclusion: less than 1% of the parents in its nationwide sample refused to approve their child's IEP. Based upon its findings, the SRI study concluded, "The goal of substantive parent involvement on a large scale is still quite a distance away from realization."

There are many people who believe the only way to alleviate some of the problems encountered during implementation of the IEP is by federal statutory change. Some have even asked that the IEP requirement be entirely deleted from the law (Shanker, 1980). Fortunately for those who believe in the premise of individualized education programs, such persons appear to be in the minority. In fact, the overwhelming majority of public witnesses that appeared before the House and Senate Oversight Hearings on P. L. 94-142 in 1979–80 called upon the Congress to stand firm and not change the Act's original IEP mandate. What was asked for, however, was more federal guidance and clarification. As expressed by SRI (1978):

> The first technique used by the Federal government to address various IEP problems . . . should be guidance and technical assistance. . . . Many fears result more from misunderstandings or confusion over what is expected than from the legal requirements themselves. . . . To the extent that the Federal government can assist in clarification of the requirements for both state and local staff, the implementation of P. L. 94-142 will be facilitated. (p. 94)

In response to this need, the Secretary of Education did publish an interpretation of the federal IEP requirements (U.S. Department of Education, 1981). The intended purposes of this document, according to the Secretary, were (a) to clarify and interpret the IEP provisions, (b) to answer some of the more frequently asked questions about these provisions, and (c) to provide technical assistance to interested parties who might wish to read this interpretation. Hopefully, this type of guidance and assistance on the part of the federal government will lead to a better understanding on the part of state and local education agencies as to the importance and benefit of the IEP concept in the education of handicapped children.

Least Restrictive Environment

Probably one of the most continually misunderstood precepts of P. L. 94-142 concerns the integration of handicapped children into regular classroom settings. Specifically, the Act requires that a state must have procedures to assure that "to the maximum extent appropriate, handicapped children . . . [be] educated with children who are not handicapped (Section 612(5)(B)). This does not mean, however, that all special education programs are to be eliminated or that *all* handicapped children are to be "mainstreamed" into regular classes. What it does require is that each handicapped child be placed in the least restrictive environment commensurate with his or her special educational needs.

The U.S. Office of Education (1979) found that over 94% of the school-aged handicapped children in this country received educational services in regular public schools during the school year 1978–79. Most handicapped children (68%) were educated in regular classroom settings. Another 25% were educated in separate classes but within regular school buildings. In a similar vein, the U.S. Department of Education (1980) reported that the number of previously institutionalized handicapped children being served by local education agencies also increased by nearly 60% since the enactment of the law in 1975. Nearly 39,000 previously institutionalized children had been returned to public school programs in just three years. Finally, of the 17 states monitored in 1979–80, only one failed to have written policies and procedures that were consistent with the federal LRE requirements.

This same trend has also been documented by the U.S. Office of Civil Rights (OCR) as well. According to OCR ("OCR Says Mainstreaming on the Rise," 1976), the percentage of handicapped students in full-time special education programs between the school years 1976–77 and 1978–79 dropped from 27% to 22%. The proportion of educable mentally retarded students in full-time special education declined from 55% to 43% during this period; orthopedically handicapped children from 73% to 57%; and blind/visually impaired and deaf/hard-of-hearing students from 27% to 20% and from 52% to 42% respectively. On the other hand, OCR found that the proportion of two subpopulations of handicapped children in full-time

special education programs had increased during this period. The proportion of other health impaired students rose from 32% to 39%, and multihandicapped children from 68% to 74%.

As might be expected, there was a considerable debate concerning the mainstreaming concept during its initial implementation. While many general education groups initially applauded the basic intent of this section of the law, some, like the National Education Association (NEA), approached its implementation with caution. NEA suggested that a number of prerequisites should be agreed to prior to the integration of handicapped children into regular classrooms (Royer, 1976). Among these were:

1. Such integration should occur only if it created a favorable learning experience for both the handicapped and the regular students.
2. There should be appropriate instructional materials, support services, and pupil personnel services for the teacher and the handicapped students.
3. Modifications might have to be made regarding class size, scheduling, and curriculum design to accommodate the shifting demands that mainstreaming might create.
4. There would need to be adequate additional funding and resources used exclusively for these new demands.

Other groups, such as the American Federation of Teachers (AFT), cautioned that misinterpretation and abuse of the requirement of placement in the least restrictive environment could lead to the dismantling of residential, regional, and self-contained programs for the handicapped. In a correspondence to his Federation leaders, Albert Shanker, President of AFT, urged them to document abuses, such as "the wholesale return of special education students to regular classrooms, firing of special education personnel, the lack of inservice training for regular teachers, and high class sizes which lessen the quality of education received by both regular and special education [students]." (1977, p. 4).

Besides professional associates, many parents and parent advocacy groups were also concerned and confused about the basic intent of the least restrictive environment provision. Having fought long and hard to obtain self-contained classrooms and facilities with specially designed instruction and programs to meet the unique needs of their children, many parents of handicapped students questioned the real benefit of the concept of least restrictive environment. Quoting national studies on the increasing violence within traditional schools, many objected to the mainstreaming of their children on the basis that they were less able to protect themselves and did not have the necessary skills to avoid potentially dangerous situations. Others worried about their children being sexually exploited or introduced to drugs and alcohol (Lowenbraun & Affleck, 1978).

These and other problems and fears are of real concern to parents who are facing the difficult task of deciding exactly what type of educational environment will best meet the needs of their handicapped children. When implemented properly, however, the concept of least restrictive environment can have a profound positive impact upon the education of both handicapped and nonhandicapped students. As quoted by one source ("Into the Mainstream," 1976), some of the most important reasons for integrating handicapped children into regular classroom settings are:

1. Handicapped children will be able to achieve more both academically and socially.
2. The exposure to the regular classroom will enable handicapped children to better cope with the "real world" when they are adults.
3. Exposure to handicapped children will help normal children to better understand individual differences in people.

After exploring many of the initial problems that have been encountered by state and local education agencies in implementing the concept of least restrictive environment, the Bureau of Education for the Handicapped (now OSE) stated in its Semiannual Report (U.S. Office of Education, 1979) that it strongly believed,

> Most if not all of [the concerns related to the requirement of least restrictive environment] will subside as the implementation of P.L. 94-142 progresses, as schools begin sharing programs, experiences and activities, and as it becomes clear, for example, that the Act does not mean indiscriminate mainstreaming or "dumping" of handicapped children into the regular classes. (pp. 43–44).

Nondiscriminatory Testing and Evaluation

In addition to assuring that all handicapped children have the basic right to an education, P.L. 94-142 also requires that they be afforded specific protections with regard to their identification, placement, and reassignment. More specifically, the law [Section 612(5)(6)] specifies that:

1. Testing, evaluation materials, and procedures used for the identification and evaluation of handicapped children will be selected and administered so as not to be culturally discriminatory.
2. Such materials and procedures are to be provided in the child's native language or mode of communication.
3. No single procedure or test can be the sole criterion for determining the appropriate educational program for the child.

According to the U.S. Office of Special Education (OSE) (U.S. Department of Education, 1980), considerable progress has been made by state and local education agencies in implementing the requirement of nondiscriminatory testing and evaluation. Since September 1977, 40 states have changed their laws and/or regulations to meet the requirements of P.L. 94-142 regarding this concept. OSE found that all 17 of the states it monitored during 1979–80 had enacted laws or regulations requiring that multiple measures be used to test potentially handicapped children; that tests be administered in the student's native language; and that handicapped students be reevaluated at least every three years. In addition, over 90% of the districts and state-operated programs reviewed in these states were found to have practices consistent with these policies.

Even with such progress, however, a number of specific problems regarding the identification, evaluation, and placement of handicapped children continue to exist. One such problem, according to the U.S. Office for Civil Rights (OCR), is the disproportionately high percentage of minority group children enrolled in special education classes. Having investigated the racial and ethnic make-up of classes for the educable mentally retarded (EMR), trainable mentally retarded (TMR), seriously emotionally disturbed (SED), specific learning disabled (SLD), and speech impaired (SI), in over 3,700 local school districts in 1976–77 and in over 6,000 in 1979–80, Wilbert Cheatham, OCR Deputy Director, appeared before the House Select Subcommittee on Education and presented the following findings from this investigation:

- Total enrollment in the five special education categories rose by 1.0% in 1978–79, from 2,556,000 to 2,582,000. White enrollment dropped by 3.4% while black and hispanic enrollment rose by 10% and 17% respectively.
- In 1976–77 blacks comprised 15% of all students in the nation, 21% of all special education students, and 38% of all EMR enrollment. Thus blacks appeared to be significantly overrepresented in EMR programs. In 1978–79 blacks comprised 17% of the total enrollment, 23% of the special education enrollment, and 41% of all EMR students—showing little change from 1976–77.
- Both black and hispanic enrollment in programs for the Specific Learning Disabled rose sharply in 1978–79. This may be considered a positive trend since it suggests that school districts are evaluating the education needs of minority students with greater accuracy and sensitivity than in the past. When compared with overall enrollment in special education, blacks were still underrepresented in the SLD category while hispanics were slightly overrepresented.
- For hispanics, blacks and whites, enrollment in EMR programs dropped, although the percentage drop in black enrollment was only 1.7% as compared with 9.1% and 15.4% drops for hispanics and whites respectively.
- In general, black participation varied significantly from that of whites in special education. (1979, pp. 3–5)

Other problems have also been encountered in implementing the nondiscriminatory testing and evaluation requirement. Many education agencies report that they have large backlogs of students waiting to be evaluated for special education. In a recent court case in New York City, for instance, over 14,000 children were found to be on such "waiting lists" (U.S. Office of Education, 1979). Other agencies indicate they are having problems with the law's requirement that the evaluation and processing of handicapped students be in their native lan-

guage. Many report they simply do not have an adequate number of personnel who speak such languages as Chinese, Vietnamese, or Portuguese. Finally, there are a number of state and local education agencies that have found it difficult to establish objective criteria for the identification and evaluation of selected subpopulations of handicapped children, such as the learning disabled and "seriously" emotionally disturbed.

There is no doubt that these problems are quite real to a number of state and local education agencies, but they are by no means insurmountable. Many effective models have already been created which demonstrate viable solutions (U.S. Office of Education, 1979). For example, in order to overcome the native language problem, the State of Delaware uses migrant workers to serve as interpreters for Hispanic individuals. Likewise, the American Association of University Women at the University of Delaware provides valuable assistance to local school districts by translating material into over 50 different languages. Finally, in addressing the need to develop acceptable identification criteria, some states, like Minnesota, have created statewide working committees to develop appropriate testing procedures for non-English-speaking children and for children with learning disabilities.

In its Semiannual Update, the U.S. Office of Education (1979) listed techniques and/or strategies that had also been developed by local and state education agencies in meeting P.L. 94-142 provisions related to the identification, location, and evaluation of handicapped children:

- Over three-fourths of the states have initiated toll-free numbers to respond to inquiries and provide information to callers regarding the rights of handicapped children and the availability of special education and related services. In many states, such as New York, the information service is available on a 24-hour basis and uses multilingual operators.
- In every state, television, radio, and newspapers have been employed to raise community and family awareness of special education services. For example, in Michigan, 800 TV and radio spots are aired yearly. In Ohio, where media campaigns were estimated to reach 80% of the state population, 2,700 out-of-school children were located and were provided services.
- In Arkansas, a grass-roots procedure using a mobile diagnostic unit was implemented by the state education agency to evaluate severely handicapped and out-of-school children in rural areas. In Utah, a statewide door-to-door canvassing of each household was conducted to identify handicapped children. (pp. 15–16)

Due Process of Law

The last statutory requirement that should be examined in order to determine the relative success of P.L. 94-142 is the right to due process of law. P.L. 94-142 establishes strict procedures for ensuring that handicapped children and their parents or guardians are afforded specific procedural safeguards in decisions that involve the identification, evaluation and educational placement of handicapped children. Among these safeguards (Section 615) are the rights (a) to receive written notification before the initiation or refusal of initiation to change the educational placement of the child; (b) to have access to all relevant records; (c) to obtain an independent educational evaluation of the child; and (d) to present complaints regarding identification, evaluation, placement or the provision of a free appropriate public education.

A problem which immediately comes to light when discussing the due process requirement is the common misconception that this provision refers primarily to the right to challenge decisions related to the education of handicapped children only after they have been made and in the context of formalized hearings. Nothing could be further from the truth. Due process procedures seek to actively involve parents and other interested persons in *all* aspects of the decision-making process, including the identification, evaluation, and placement of their handicapped children. In fact, a number of creative activities have been employed by state and local education agencies to ensure the active participation of all interested individuals in this process and thereby help prevent later confrontations in formalized due process hearings. For example, Education Turnkey Systems (1978), in its three-state investigation of the implementation of P.L. 94-142, documented the following activities which it indicated might prevent an adversarial role from developing.

In one of the participating states, the SEA not only held regional hearings on P.L. 94-142 during the first year of implementation throughout the state, but also presented its SEA Annual Plan over "statewide television," receiving over 100 comments from interested parents and parent groups. In addition, the SEA recently conducted a workshop for lawyers who were interested in serving as hearing officers. Another SEA has developed a manual for hearing officers; the manual is also used to train LEA staff throughout the state. Such activities will undoubtedly improve the nature and extent of parental involvement in all sites over time.

Before P.L. 94-142 was passed in 1975, The Council for Exceptional Children (1974) found that only 12 states at that time had special education legislation that included due process requirements, and that an additional 13 states had regulations containing such requirements. As of 1980, according to both the *Semiannual Update on the Implementation of Public Law 94-142* (U.S. Office of Education, 1979) and the *Second Annual Report to Congress* (U.S. Department of Education, 1980), all states have now made efforts to modify their statutes and/or regulations to meet the due process requirements contained in P.L. 94-142. During its 1978–79 Program Administrative Reviews, BEH (now OSE) found only 3 of the 16 states it visited had policies that were inconsistent with federal regulations.

Although there is data to suggest that due process hearings tend to decrease in their frequency over time, considerable variation in due process activity exists between the states. A study of 15 states conducted by the National Association of State Directors of Special Education (NASDSE, 1980), for instance, found that the actual number of hearings conducted during 1979–80 ranged from a high of 500 in Massachusetts and 310 in Illinois to as few as 5 in Florida and South Dakota. In terms of real dollars, SRI (1980) found that the actual cost of due process hearings can range from between $1,000 to $10,000 per hearing. As a result of this cost factor, many state and local education agencies have attempted to resolve their differences by less costly and less adversarial means. Massachusetts and Connecticut have prescribed a mediation process whereby state-appointed mediators assist local education agencies and parents in resolving their differences. According to the NASDSE report, about 40% of the potential due process hearings in Massachusetts are resolved during this process.

It is also interesting to note some of the common characteristics that have been discovered by various studies with regard to the due process hearings themselves. SRI (1980) found that three items in particular appeared most often in the hearings it investigated. These involved private school placements, denial of placement (e.g., waiting lists), and the provision of inappropriate services. NASDSE's study (1980) likewise identified five issues that it found to be the cause of the majority of hearings it examined. In order of their frequency, these were: (a) private versus public school placements; (b) appropriateness of evaluation and eligibility for special education; (c) appropriateness of program and services; (d) the length of the school day and/or year (especially for severely and profoundly handicapped children); and (e) transportation arrangements. Finally, the Massachusetts State Department of Education, beginning in 1974, examined the results of over 225 cases in which a full hearing was conducted. They identified the following common characteristics:

Characteristics of Children and Parents

- 66% of the children were categorized as learning disabled and 15% as emotionally disturbed.
- 75% of the children were male and 25% female.
- The distribution of age:

3–5	3.5%
6–11	42.2%
12–13	24.9%
14–17	25.4%
18–21	4.2%

- The staff impression was that parents who were involved in these appeals were "overwhelmingly middle and upper income whites." It is estimated that less than 5% of the appeals involved minority or low income parents.

Individuals Involved in Hearings

- The public schools were generally represented by from six to eight people (the Director of Special Education, four or five key staff, and one or two teachers).

- In private school placement issues, the parents would usually bring several representatives from the private school (evaluators and supportive witnesses).
- Half of the parents and half the schools used attorneys. The appearance of an attorney seemed to have little impact on the results of the hearing.

Analysis of Formal Hearings

- Hearings averaged six to eight hours, with six to ten people testifying. An average of 60 pages of written evidence was presented.
- In the first 225 decisions, approximately 47% favored the public school and 52% favored the parents.
- As of June 1977, 110 cases had been appealed to the State Advisory Commission by parents. Eighty-five percent of these appeals upheld the decision of the hearing officer. Forty-five cases had been further appealed to the state court, 30 by the public schools and 15 by the parents.
- For parents, the costs of lawyers and specialists ran as high as $4000. The average cost of a lawyer was $800 to $1000.
- Minimal expenses to the school system included the cost of substitutes, the preparation of written material, and staff time. In addition, the schools incurred attorney's fees of up to $8000 per hearing, with an average of $800 to $1000 in attorney's fees. (NASDSE, 1978)

Before ending discussion of the requirement of due process, two additional findings of SRI's study should be mentioned. First, SRI (1980) concluded from its data that only a small group of dissatisfied parents with above-average educational backgrounds and income levels tend to pursue the benefits of due process. If due process rights are to be properly exercised by all parents of handicapped children, it is obvious that the population that is primarily taking advantage of the system needs to be greatly expanded. Second, the SRI study found that over the past three years there has been general decline in due process hearing activity in the states it sampled. This appears to suggest that, as parents and professionals become more familiar with both the benefits and limitations of P. L. 94-142, other less costly and time-consuming methods are being employed by these groups to successfully resolve their differences.

Summary and Conclusions

This chapter has attempted to portray some of the many accomplishments which have been achieved by state and local education agencies in implementing P. L. 94-142. As has already been stated, nearly four million handicapped children received special education and related services during school year 1980–81. Ninety-four percent of these children received the services in regular public schools during this period. Education is becoming more individualized, protections are being used more, and efforts are being made at the federal and state levels to improve the coordination of services for this population. Despite such impressive accomplishments, state and local education agencies have encountered a variety of difficulties in implementing this law. Eight areas, in particular, were recently identified by a Secretarial Task Force on Equal Educational Opportunity for Handicapped Children (1979) as matters of serious concern for the future:

- Although the law requires States to identify and evaluate all handicapped children, in some areas there are still cases of unidentified children and long waiting lists for evaluations and for placements.
- While States are required to use nondiscriminatory evaluation procedures, a disproportionate number of minority children have been misclassified and inappropriately placed in educational programs for the "educable mentally retarded."
- While children are to receive a free appropriate public education regardless of what public agency serves them, there are problems in the quality of education received by many children served by various State agencies, especially in the case of institutionalized children.
- There are significant differences among States and localities in the provision of related services.
- The expulsion of handicapped children raises concerns regarding the denial of a free appropriate public education.

- Some severely handicapped children have not been provided programs beyond the regular school year.
- While States are required by law to serve children in the least restrictive environment, there are children assigned to separate facilities whom parents and advocates believe should be served in regular school settings.
- Although the law requires that handicapped children who are wards of the States or whose parents are otherwise unavailable be assigned surrogates, there are deficiencies in the procedures used to identify and assign surrogates.

Even with such problems, however, one would have to agree with the following observations made by the Task Force with respect to the progress that has already taken place in achieving the multiple purposes and goals of P. L. 94-142:

1. The activity that has occurred during the first year(s) of the Act's implementation has been impressive.
2. The commitment to the goals of the Act appears to be not only widespread but genuine.
3. Many of the problems that were expected to impede implementation are being resolved.

In summary, although we have not yet reached our goal of providing a free appropriate public education to *all* of our handicapped children, we have made substantial progress towards it.

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CHAPTER 4

Section 504: The Larger Umbrella

MARTIN H. GERRY
J. MARTIN BENTON

Civil rights have traditionally traced their origins to the passage of the Fourteenth Amendment to the Constitution of the United States in 1866 (and the subsequent ratification by the states). The 39th Congress, in proposing that "No State . . . deny to any person within its jurisdiction the equal protection of the laws," could have had little foresight, individually or collectively, of the radical impact this language would have on the basic fiber of American political and social institutions. Ninety years later, the Supreme Court in *Brown* v. *Board of Education* (1954) would permanently root the concept that separate treatment because of race was inherently unequal under the spreading mantle of the Equal Protection Clause. In another two decades, the 93rd Congress would pass a simple statutory declaration of principle which would dramatically expand the basic assumption of civil rights law—Section 504 of the Rehabilitation Act of 1973.

As interpreted by the Executive Branch and the courts, Section 504 has required social institutions to gauge the justness of their practices by the impact of those practices on the various groups of people the institutions are responsible for serving. For the first time, many of the parochial, exclusionary, and essentially arrogant reward systems that for centuries had been built into social institutions were directly challenged.

Institutions have cultures, and many institutional cultures tend to reward only those who speak the same language, reflect the same cultural values, and possess "normative" physical, sensory, or mental abilities. The same system that "assumes" that all children can see, hear, walk, abstractly reason, and communicate along a narrow spectrum (and therefore disadvantages those who fall outside this "assumed" spectrum) is the system that ascribes limitations on the basis of race, sex, age, and other stereotypical characteristics. While other civil rights statutes have challenged the disparate treatment received by minorities, women, and the elderly at the hands of social institutions, Section 504 strikes most directly at the exclusionary heart of those institutions. By challenging the assumptions about people underlying institutional behavior, Section 504 has revealed an obvious yet elusive reality: Blacks, Hispanics, women, the elderly, and the handicapped are different from the assumed client or beneficiary of the institution. All of these groups share the common goal of transfusing the richness of a multicellular world into the life blood of institutions charged with hiring, educating, treating, transporting, and housing our nation's people. The vitality of American social institutions will ultimately depend on their ability to value and reward equally the different characteristics of a heterogeneous society.

The Fourteenth Amendment was designed to grant equal political and civil rights to all citizens; *Brown* v. *Board of Education* served to declare unjust the inequality manifested in separate treatment; Section 504 serves as the vehicle for declaring the entire range of human cultures, abilities, and potentials to be of equal value in the shaping of social institutions.

The Time of Enactment

Late 1973 appears in many ways an unlikely time for passage of Section 504. The first year of the second Nixon Administration was a time of rising anti-civil-rights rhetoric. White House attention was focused on a variety of anti-busing proposals which had gained strength year by year in both amount and breadth of political support. Prior to 1973, very little attention had been given either by the Executive Branch or by Congress to the idea of civil rights for disabled people. Only in the courts had active conflicts arisen between those who insisted that disabled children and adults had a right to be free of discrimination and those who argued that the very notion of rights was likely to destroy the good will and charity which had allowed disabled people to advance as far as they had.

The Courts

By 1973, various Federal courts had acted in four distinct areas which either directly applied to the rights of disabled people or formed a solid Constitutional basis for a direct application:

- The right to education.
- The right to treatment.
- The right to procedural fairness.
- The right to equal participation.

Without a proper understanding of what the rights of disabled individuals were at the time of passage of Section 504, one cannot fully comprehend the need for its enactment by the Congress.

The Right to Education

The right to an appropriate, meaningful education is one of the most important rights one may possess. While the U.S. Supreme Court decision in *Brown* v. *Board of Education* (1954) is properly cited (as will be discussed later) as the landmark case declaring deliberate segregation or educational isolation to be unconstitutional, in reaching this result the Court created a Constitutional context for much more than school desegregation. Recognizing that "education is perhaps the most important function of state and local governments," the Court established the basic premise for the right to education of *all* children.

> Compulsory school attendance laws and the great expenditures for education both demonstrate our recognition of the importance of education to our democratic society. It is required in the performance of our most basic public responsibilities, even service in the armed forces. It is the very foundation of good citizenship. Today it is a principal instrument in awakening the child to cultural values, in preparing him for later professional training, and in helping him to adjust normally to his environment. In these days, it is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education. Such an opportunity, where the state has undertaken to provide it, is a right which must be made available to all on equal terms. (p. 493)

However, it was not until the case of *Pennsylvania Association for Retarded Citizens (PARC)* v. *Commonwealth of Pennsylvania* (1971) and *Mills* v. *Board of Education (1972)* that the District Courts began to address the questions of meaningful education for children who are handicapped. The Court in PARC held that the exclusion of mentally retarded children from the classroom violated their right to equal protection guaranteed by the Fourteenth Amendment. The *Mills* decision went the next step in holding that mentally retarded children must receive a publicly supported education suited to their needs, including compensatory educational services. The Court found that the right to participate in education meant that the participation had to be real, rather than *pro forma*.

The Right to Treatment

Section 1 of the Fourteenth Amendment, the clause which immediately precedes the Equal Protection Clause, applies an early Constitu-

tional injunction from the Fifth Amendment to actions of the States: "No state shall . . . deprive any person of life, liberty, or property, without due process of law." The language of this clause has given rise to two important legal themes of direct relevance to the rights of disabled persons:

1. What constitutes a sufficient, substantive basis for depriving people (including mentally retarded and mentally ill persons) of their liberty?
2. What is a fair procedure for determining whether a sufficient, substantive basis exists with respect to a particular person?

The second of these questions—the issue of procedural fairness—is discussed in the next section. The first of these questions—the issue of the substantive basis for involuntary confinement (i.e., institutionalization of disabled persons)—was examined in two important cases during the year before the passage of Section 504.

The first case, *Jackson* v. *Indiana*, dealt with indefinite pretrial confinement of a mentally disabled person found by the State of Indiana to be "feeble-minded." In striking down Indiana's pretrial confinement system, the Supreme Court summarized the legal history to date:

> The States have traditionally exercised broad power to commit persons found to be mentally ill. The substantive limitations on the exercise of this power and the procedures for invoking it vary drastically among the States. The particular fashion in which the power is exercised—for instance, through various forms of civil commitment, defective delinquency laws, sexual psychopath laws, commitment of persons acquitted by reason of insanity—reflects different combinations of distinct bases for commitment sought to be vindicated. The bases that have been articulated include dangerousness to self, dangerousness to others, and the need for care or treatment or training. Considering the number of persons affected, it is perhaps remarkable that the substantive constitutional limitations on this power have not been more frequently litigated. (p. 736)

The Court's final observation on the frequency of litigation over substantive Constitutional limitations was a harbinger of an important decision then wending its way through the federal appellate system.

In February 1971, a mental patient at the Florida State Hospital at Chattahoochee brought suit challenging that he had a Constitutional right to liberty because, though he had been committed to the hospital for "care, maintenance and treatment," he had, in fact, not been provided treatment while at the facility.

In framing jury instructions, the trial judge articulated the standard which would become the basis for the Supreme Court's sweeping decision in *O'Connor* v. *Donaldson* (1975). The judge advised the jury:

> Now the purpose of involuntary hospitalization is treatment and not mere custodial care or punishment if a patient is not a danger to himself or others. Without such treatment there is no justification from a constitutional standpoint for continued confinement unless you should also find that (Donaldson) was dangerous either to himself or others. (p.570)

The Right to Procedural Fairness

In the early 1970's, several cases were decided by the U.S. district courts interpreting the requisite procedural fairness which had to be observed before an individual could be involuntarily institutionalized. The right to counsel, the right to a formal hearing in which an individual may offer evidence on his or her own behalf, the application of a stringent standard of proof, and the requirement that a formal record of proceedings be maintained are all elements of a constitutionally adequate procedure.

In one important case decided the year before passage of Section 504 (*Wyatt* v. *Stickney*, 1972), a federal district court added to the concept of procedural fairness the burden on the state of demonstrating that a proposed institutional confinement is the least restrictive environment consistent with the needs of the person to be confined.

The Right to Equal Participation

The right of children to equal participation in public education systems was well established by 1973. The Supreme Court of the United States

in *Brown*, after commenting that "it is not surprising that there should be so little history of the Fourteenth Amendment relating to its intended effect on public education"(p. 490), established the basic right of equal participation in public education:

> To separate them (black children) from others of similar age and qualifications solely because of their race generates a feeling of inferiority as to their status in the community that may affect their hearts and minds in a way unlikely ever to be undone. (p. 494)

Of particular interest to the background of Section 504 is the consideration by the Court of the argument advanced by several southern school districts that, while race was not a permissible basis for segregation of children, alleged racial differences in educational achievement or aptitude might be. The Supreme Court rejected this notion of educational retardation as a basis for segregation, citing with approval the district court's rejoinder that:

> The policy of separating the races is usually interpreted as denoting the inferiority of the Negro Group. A sense of inferiority affects the motivation of a child to learn. Segregation with the sanction of law, therefore, has a tendency to [retard] the educational and mental development of Negro children. (p. 494)

This language is striking in its currency, particularly in its correlation to the effect of social and educational integration of handicapped children who, when confined to isolated settings, had been declared too retarded to learn. This concept of the retarding effects of institutional isolation forms the fourth and final Constitutional underpinning of Section 504.

The Statutory and Regulatory Setting

By 1973 Congress had passed only two laws directly establishing statutory bases for the civil rights of students in public education: Title VI of the Civil Rights Act of 1964 and Title IX of the Education Amendments of 1972. At that point in time, implementing regulations and policy guidelines affecting public education had been issued by the Department of Health, Education and Welfare (HEW) only under the former statute.

School Desegregation

Based on the power to regulate the use of Federal funds, Title VI prohibited discrimination on the basis of race, color, and national origin in public education programs which receive federal financial assistance. Relying for enforcement primarily on the administrative authority of HEW to terminate federal assistance to school districts which were guilty of racial discrimination, Congress moved to speed up the drive for desegregation slowly proceeding through the courts by creating a powerful financial disincentive to continued resistance. In the first six years of the statute, HEW's Office of Civil Rights focused virtually all of its resources on a massive effort to desegregate almost 4,000 southern school systems once enmeshed in *de jure* segregation.

Particularly germane to a discussion of the background of Section 504 is an unsuccessful experiment in parental participation in the Title VI civil rights context which took place during this period.

Freedom of choice was a widely pursued approach to school desegregation on a "voluntary" basis during the first four years of the Title VI enforcement process. Premised on the view that parents of Black children could effectively protect the rights of their children to an integrated public education, proponents of the "free choice" desegregation approach argued that if parents of all children were simply given the right to choose a school for the child to attend (among both formerly Black and White schools), equal educational opportunity could be achieved. Of course, proponents of this strategy omitted from discussion the fact that the social pressures and traditions of a racist community hardly offered any true "free choice." In fact, parents of most Black children continued to send their children to the traditionally Black institutions which they had themselves attended. Many felt that the hostility, or at least the cultural exclusiveness, of the formerly White schools would create a socially and educationally disadvantaged school environment for their children.

In-School Discriminatory Practices

By 1970, however, two new themes in the development of Title VI policy began to emerge. First, national origin minority groups began to

clamor for recognition, asserting not only a right to be free from unlawful segregation, but demanding an end to cruelly disabling language barriers which served to exclude limited- and non-English-speaking children from meaningful participation in public education. Second, more complex patterns of unequal educational opportunity for minority children became more clearly focused, among them ability grouping, tracking, and mislabeling.

The issue of educationally disabling language barriers was explored at length by HEW in 1969–70. In May 1970, the Department issued a memorandum to school districts requiring districts to take affirmative steps to pluralize their instructional programs in order to eliminate language and cultural incompatibilities between national origin minority children and a monolingual, monocultural curriculum. This memorandum, subsequently upheld by the Supreme Court in *Lau* v. *Nichols* (1974), foreshadowed the central issues of Section 504 more than any other statutory or regulatory policy.

Underlying the memorandum was a little-noticed provision of the Title VI regulation which provides basic reinforcement for the radical proposition which would follow both in the Section 504 regulations and in P. L. 94-142–that the *effect* of educational practices on the learning of children is itself a major civil rights issue.

The growing attention in the early 1970's paid to in-school segregation also provides an appropriate backdrop to the passage of Section 504. Issues of least restrictive environment, while not raised under that label, permeated much of the discussion, with school districts seeking to justify the isolation of minority children on "educational" grounds.

Sex Discrimination in Education

Major significance attaches to passage of Title IX of the Education Amendments of 1972 in terms of the climate surrounding passage of Section 504 a year later. For the first time, Congress moved beyond the traditional Fourteenth Amendment suspect classification of race (and national origin) by requiring school systems to eliminate discrimination on the basis of sex in public education. In addition to being a vitally important legislative landmark in the struggle for equal rights for women, the action taken by Congress in 1972 made clear that broad issues of social justice in public education, not just the elimination of dual school systems, were to become a federal concern.

Passage of Section 504 and Development of the Regulations

On September 23, 1973, Congress passed Section 504 of the Rehabilitation Act, which stated:

> No otherwise qualified handicapped individual in the United States, as defined in section 7(6), shall, solely by reason of his handicap, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.

Section 7(6) of the Act, in turn, defined the term *handicapped individual*:

> The term "handicapped individual" means any individual who (A) has a physical or mental disability which for such individual constitutes or results in a substantial handicap to employment and (B) can reasonably be expected to benefit in terms of employability from vocational rehabilitation services provided pursuant to titles I and III of this Act.

Five months later, in February 1974, Secretary Weinberger assigned responsibility for carrying out those provisions of Section 504 which applied to the Department of Health, Education and Welfare to the Office of Civil Rights. This decision represented a major victory for those who saw the statute as civil rights, rather than social welfare, legislation.

In August of 1974, John Wodatch, a responsible senior staff person in OCR, was assigned to work full time on developing regulations to implement the statute. This decision followed the issuance of an opinion by the General Counsel of HEW (concurred in by the Department of Justice) which maintained that the Department had the power to issue regulations to implement the statute. After this decision was made, OCR began to work closely with the Senate Subcommittee on the Handicapped and the House Subcommittee on Select Education to develop both the definition of "handicapped" and the substance of the regulations.

Once OCR had received jurisdiction and assigned staff to work on Section 504, various

policy papers were developed for internal review. Some of the topics addressed in these papers were (a) the definition of handicapped individual, (b) the mechanism for enforcement of statutory rights, (c) coverage of employment practices, and (d) the implications of the statute on the removal of architectural barriers.

Defining the Population

One of the first problems in the process of implementing the statute was to define who was covered by Section 504. The definition in the original statute–"those persons with the ability to benefit from rehabilitation services"–was too narrow for the purposes of a major piece of civil rights legislation. In recognition of the need for clarifying language, Congress passed the Rehabilitation Act Amendments of 1974 on December 7, 1974. These Amendments contained the following provision:

> (a) Section 7(6) of such Act is amended by adding at the end thereof the following new sentence: "For the purposes of titles IV and V of this Act, such term means any person who (A) has a physical or mental impairment which substantially limits one or more of such person's major life activities, (B) has a record of such an impairment, or (C) is regarded as having such an impairment.

Under the leadership of John Wodatch and Ann Beckman, an attorney assigned to work on the project by the General Counsel's Office, serious activity began in late 1974 on the development of the regulations. From first draft until their appearance in final form, the Section 504 regulations went through numerous revisions. Many battles, both within and without the Department, were fought among the various interests affected by this statute. A brief review of this history is important to understanding Section 504.

Several issues arose during the drafting process which had to be resolved in order to propose regulations. Most of the controversy centered around the question of who should be covered by the statute, specifically whether alcoholics, drug addicts, and homosexuals are handicapped persons within the context of Section 504. A second issue of major concern was whether Section 504 established a right to treatment for persons within an institutional setting. A third issue involved the potential impact of architectural barrier requirements on small health care and social service providers.

The Section 504 coverage of alcoholics and drug addicts was perhaps the most controversial and difficult of the issues surrounding the drafting process. Many people, including members of various advocacy groups, felt that alcoholics and drug addicts were not handicapped within the meaning of the statute and, moreover, that the inclusion of these categories of people might seriously erode public support of the statute as a whole. Both HEW Secretary David Mathews and his successor, Secretary Joseph Califano, had grave reservations about the wisdom of extending Section 504 to these groups. The issue was ultimately resolved by the Attorney General who, following a request by Secretary Califano for an interpretation, decided that drug addiction and alcoholism are "physical or mental impairments" within the meaning of Section 504.

Homosexuals were the next group to be considered for coverage under Section 504. Proponents for inclusion of homosexuals under Section 504 perceived them to be handicapped and thus felt they met the definition; others claimed that homosexuality is not a mental illness, a disease, or a handicapping condition, and thus does not fall within the statutory definition. The Director of OCR decided to exclude homosexuals from express coverage under the regulations.

The Right to Treatment

The question of whether Section 504 created a right to treatment for persons within institutions was another important issue that had to be wrestled with by those drafting the regulations. Because of the way Section 504 is written, the right to treatment for the handicapped is only guaranteed if others served by the same agency or institution are receiving treatment. Section 504 prohibits agencies that receive federal financial assistance from treating one portion of the population it serves unequally from another. For any given institution, compliance is judged by comparing the treatment of handicapped individuals with the treatment of the other individuals in the institution. Such an analysis of the statute makes it obvious that the Congress did not intend to create or establish substantive (as contrasted with "equal") rights in enacting Section 504. Thus, Section 504,

unlike the Developmentally Disabled Assistance and Bill of Rights Act, should not be interpreted as providing the right to treatment for individuals in institutional settings.

Inflationary Impact Statement

A final obstacle encountered in the process of issuing the final regulations was the requirement that an inflationary impact statement be prepared projecting the effect of the regulations on the economy. The Department contracted with outside consultants who prepared an impact statement that compared the cost of implementing the regulatory requirements with the potential savings which could be realized by providing services to disabled individuals. Although time consuming, the results of this analysis proved invaluable in securing final clearance of the regulations. The analysis clearly demonstrated the comparatively low cost of compliance and the tremendous positive financial impact of providing disabled persons with educational and support services which would allow them to move from a state of dependency to one of economic productivity.

Consistency with P. L. 94-142

While the Section 504 regulations were being developed, Congress enacted Public Law 94-142 (The Education for All Handicapped Children Act of 1975). Because of the overlap in coverage between this statute and Section 504, it became necessary to coordinate the future compliance efforts of OCR and the Bureau of Education for the Handicapped (now Special Education Programs). While no formal agreements or procedures were ever established to coordinate the drafting of the two sets of regulations, the staffs of the two offices worked together on an informal basis to ensure consistency between the regulations. What emerged from this process was a consistent definition in both sets of regulations of the basic elements of a free, appropriate public education.

Publication of Regulations

In May 1976, the Department issued a draft of the Section 504 regulations for public comment in the form of a Notice of Intent to Issue Proposed Rules. In July 1976 the Department published a Notice of Proposed Rulemaking in the *Federal Register* and then conducted 22 hearings in various locations throughout the country at which all interest groups were invited to comment freely. During the same period, the Department received over 700 written comments concerning various portions of the regulations.

Almost ten months elapsed between the publication of the proposed regulations in the *Federal Register* and their final publication on May 4, 1977. The first six months of this period, the final days of the Ford Administration, saw HEW Secretary David Mathews reluctant to issue the regulations because of concern over a number of issues, particularly the coverage of alcoholics and drug addicts. Secretary Mathews feared a potential backlash because of the substantial impact of the new regulations and concluded that it would be more prudent to let the new administration make the final determination of whether to issue the regulations. Secretary Mathews' reluctance to act was greeted by protest and lobbying efforts on the part of the consumer groups. Part of this effort involved the filing of *Cherry* v. *Mathews* (1976), a case seeking to judicially force the issuance of the regulations. Secretary Mathews, however, left office on January 20, 1977, without taking action.

Sensing the potential political problems which might be created by the final regulations prepared by OCR during the last several months of the Ford Administration, the new Secretary of Health, Education and Welfare, Joseph Califano, stalled for time. Again, various consumer groups interested in having the regulations published immediately exerted political pressure. In fact, groups of consumers and advocates sat in the Federal Building in San Francisco, and blocked the entrance of the Secretary's driveway in Washington D.C. with their wheelchairs. On May 4, 1977, the political system finally gave life to the promise of equal opportunity made in September 1973.

Enforcement

Unlike the educational development of children, the legal development of statutory language evolves slowly and steadily, through a process of administrative and judicial interpretations. Like any new statute, Section 504 has been in the development phase. Normally, the

first questions to be answered are procedural. Characteristically, several important issues involving fundamental procedural issues under Section 504 have already been decided, such as (a) whether there is a private right of action under this statute, (b) whether an individual must exhaust administrative remedies before filing a complaint in court, and (c) the extent to which the statute covers employment. The next phase of the process involves defining the substantive content of the statutory injunction, i.e., what constitutes discrimination under this provision.

Private Right of Action

The question of a private right of action under Section 504 is of crucial importance from the enforcement perspective. When an aggrieved individual is permitted to file suit directly, the problems of administrative bottlenecks and political paralysis can be circumvented. While the question of the existence of a private right of action under Section 504 has not been directly answered by the Supreme Court, the analysis supporting the Court's decision in *Cannon* v. *University of Chicago* (1979) (involving Title IX of the Education Amendments of 1972) all but disposes of the question. The Court in the *Cannon* decision enunciated several compelling justifications (under a statute virtually identical to Section 504) for reaching a positive finding. The Supreme Court's acceptance of the notion of a private right of action under Section 504 can be inferred from the Court's decision in *Southeastern Community College* v. *Davis* (1979). In the *Davis* case the court acted on the merits of a private action.

Exhaustion of Administrative Remedies

Exhaustion of administrative remedies before filing suit is another extremely important procedural issue. One of the elemental principles of administrative law is that, where there are clearly defined procedures for dispute resolution, a court will not have jurisdiction over the matter until the aggrieved party exhausts those procedures. Because of the enormous time lapses between the time a complaint is filed and a final resolution occurs, a decision to limit judicial enforcement of Section 504 by forcing complainants to await completion of the administrative process may be tantamount to denial of a private right. The Department of Justice has argued successfully in several suits that exhaustion of the administrative remedies is not required (*Whitaker* v. *Board of Education*, 1978; *Camenisch* v. *University of Texas*, 1980). Other courts have held that there is a need for exhaustion (see *Doe* v. *New York University*, 1978, and *Drennon* v. *Philadelphia General Hospital*, 1977).

Nondiscrimination in Employment

A final procedural issue which has been addressed by the courts concerns the issue of what types of employment situations are covered by the statute. In other words, the issue is whether the job the individual has been denied because of discrimination was created by federal funds. The Fourth Circuit Court dealt with this issue in *Trageser* v. *Libbie Rehabilitation Center, Inc.* (1979), a case involving the dismissal of a visually handicapped nurse from employment. The *Trageser* Court held that the action under Section 504 must be dismissed because of a failure to show that the primary objective of federal financial assistance to the employer was to provide employment. This holding was premised on an implied limitation transferred from Title VI (Section 604). Since Section 504 is patterned after Title VI, the court maintained that the Title VI limitation on employment should be read into Section 504. However, the court's logic fails in this instance. The reason for the Title VI limitation was the desire of Congress to avoid unnecessary duplication between Title VI and Title VII, a companion title which dealt broadly with employment discrimination under the interstate commerce power. Section 504 has no broad-based companion (although Section 503 requires "affirmative action" by federally financed employers), and the broad injunctions of Title VII do not extend to handicapped persons.

Other Enforcement Issues

Cases dealing with more substantive interpretations of Section 504 are discussed in Chapter 6. Of special significance are *Southeastern Community College* v. *Davis* (1979), which deals with reasonable accommodation; *Larry P.* v. *Riles* (1979), a case first filed in 1971 involving non-

discriminatory assessment; and *Lora, et. al.*, v. *The Board of Education of the City of New York* (1978), which deals with appropriate evaluation and placement in the least restrictive environment.

Even this brief review of the enforcement potential of Section 504 should suffice to illustrate the profound impact that the statute has had on the struggle of disabled persons to obtain equal access to social and economic institutions. Such a goal is not achieved overnight nor without some setbacks, but the concept of social justice through law has been immeasurably strengthened by this struggle.

The Future

While today the public schools are both the major focal point and battleground, today's handicapped secondary school students are tomorrow's college students. Higher education institutions have yet to feel the tremendous impact of the current IEP generation on the culturally exclusive groves of academia.

The next ten years of Section 504 in public elementary and secondary education will probably be occupied as much with issues of educational quality as with issues of educational access. The vehicle for this enforcement activity in the Section 504 regulations will be the concept of appropriateness:

> An appropriate education is the provision of regular or special education and related aids and services that (i) are designed to meet individual educational needs of handicapped persons as adequately as the needs of nonhandicapped persons are met.

Assuming Section 504 and its attendant regulations are not fundamentally altered, the challenge to government at all levels will be better coordination—better coordination among the federal cabinet agencies charged with Section 504 implementation; better coordination between the Office of Civil Rights and the Special Education Programs Office in joint enforcement of Section 504 and P. L. 94-142; and better coordination at the local level among the various agencies responsible for providing education, health, mental health, and social services to disabled children.

Another exciting legal vista during this period will be the pursuit of community-based services (including adult and "higher" education) for disabled adults. Education is a lifelong activity for all of us and, thus, the right to education must have meaning beyond the twenty-second birthday.

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CHAPTER 5

The Education of Gifted and Talented Children from a Federal Perspective

JEFFREY J. ZETTEL

> Society can choose to educate a few people exceedingly well or to educate a great number of people somewhat less well, *but it cannot do both.*
>
> (Gardner, 1961, p. 33)

The above statement, written by John Gardner in 1954, graphically depicts the historical ambivalence toward the education of gifted and talented children that has often been demonstrated, not just by the federal government, but by society in general. Expressing similar sentiments, Abraham Tannenbaum wrote in the Seventy-Eighth Yearbook of the National Society for the Study of Education (1979), "The cyclical nature of interest in the gifted is probably unique in American education. No other special group of children has been alternately embraced and repelled with so much vigor by educators and laymen alike" (p. 5).

The purpose of this chapter will be to examine this "cyclical nature of interest" from the federal perspective. To best accomplish this, the evolution of the federal role in the education of gifted and talented children will be described from both the social and political perspectives. Furthermore, the history of federal involvement with this population will be depicted within the context of five essential time periods: the years prior to 1951; the period from 1951 through 1959; the decade from 1960 to 1970; the years 1971 through 1980; and the time from 1981 to the present.

The Beginnings of Federal Interest

Federal interest in the gifted and talented can be traced from as early as 1931, when the U.S. Office of Education created a Section on Exceptional Children and Youth. Although this program did not have specific legislative or fiscal authority, it did establish the foundation for future federal involvement in special education.

In 1946, two events occurred that helped to greatly increase the federal government's concern for gifted and talented children and youth. The first, an experiment with the code name Trinity, took place in a stretch of semi-desert land 40 miles outside of Alamogordo, New Mexico. Its results were not only awesome, but devastating. For those present, in the words of William L. Laurence, there was "a sunrise such as the world has never seen" (1945, p. 10). On July 16, 1945, at 5:30 a.m., the United States exploded the world's first atomic bomb.

Three weeks later, a second event took place which vividly demonstrated the awesome power and responsibility of a nation possessing such a weapon. On August 6, 1945, the U.S. B-29 bomber *Enola Gay* released a single missile over the Japanese city of Hiroshima. Within seconds, 60,175 of the city's inhabitants were either dead or missing. Four square miles of civilization were vaporized. World War II, for all practical purposes, was over, and America became the undisputed leader and defender of the free world.

One of the consequences of the acquisition of global leadership was the public's perceived need for technological advancement and financial support for the sciences (Manchester, 1973). Over 100 public witnesses appeared before the Senate Subcommittee on War Mobilization in 1945 and called for the federal government to substantially increase its financial support for basic scientific research. In his inaugural address, President Truman likewise stressed the vital need to develop our nation's scientific productivity. The new President boldly proclaimed:

> We must embark on a bold new program for making the benefits of our scientific advances and industrial progress available for the improvement and growth of underdeveloped areas. . . . American technological skills might revolutionize primitive agricultural techniques, raise the standard of living in Asia and Africa, and tame their rivers with new TVA's. (Manchester, 1973, p. 474)

Federal interest in the gifted and talented was therefore essentially present by 1946. What was needed, however, was a catalyst to bring the federal government into a much more active role. Much of the pressure that was needed to accomplish this was brought about through events in 1948 and 1949 that demonstrated the intimate link between scientific research and our national defense. In February 1948, Stalin seized Czechoslovakia; on June 24, the Soviet Union imposed a blockade on Berlin; on August 5, 1949, the U.S. State Department issued a 1,054-page "white paper" indicating that the world's largest nation, China, had fallen into Communist hands; and finally, on September 23, 1949, President Truman released the dire statement, "We have evidence an atomic explosion occurred within the USSR" (p. 488).

The reaction of the 81st Congress was swift. In the spring of 1950 it passed the National Science Foundation Act (P. L. 81-247). Through this historic piece of legislation, the Congress not only directed resources toward the development of the sciences and basic research, but for the first time focused federal attention on the needs of the nation's gifted and talented.

Essentially, the National Science Foundation Act was passed for six basic purposes:

1. To initiate and support basic scientific research and programs which would strengthen scientific research potential and science education programs at all levels in the mathematical, physical, medical, biological, engineering, social, and other sciences.
2. To award scholarships and graduate fellowships in the above mentioned areas.
3. To foster the interchange of scientific information among scientists in the United States and foreign countries.
4. To foster and support the development and use of computer and other scientific methods and technologies, primarily for research and education in the sciences.
5. To evaluate the status and needs of the various sciences.
6. To maintain a current register of scientific and technical personnel and establish a national clearinghouse.

As previously indicated, prior to 1951 Congressional concern for the gifted and talented population was concentrated primarily on basic and applied scientific research and its relationship to the general welfare of the country. Hence, the majority of federal aid was directed toward university and graduate scholarships in this area. Programs and projects sponsored by the National Science Foundation (NSF) during this period were aimed at improving the basic curriculum and encouraging gifted and talented students to pursue careers in mathematics and in the physical sciences. Among the more widely known of these were the School Mathematics Study Group (SMSG), Physical Sciences Study Committee (PSSC), Biological Sciences Curriculum Study (BSCS), Chemical Bond Approach (CBA) and Project Physics (PP). At a later date, NSF would also help to develop new curricula in the social sciences and humanities through projects such as Project Social Studies, Project English, and the Anthropology Curriculum Study (Gallagher & Weiss, 1979).

1951 through 1959: An Upsurge of Interest and Effort

Although the passage of the National Science Foundation Act in 1950 was evidence that federal concern for the gifted and talented was continuing to evolve, two studies conducted at the time pointed to a considerable decrease in public and professional interest in this population. For example, while a nationwide survey completed in 1929 (Heck, 1930) found that nearly two-thirds of the school districts with populations over 25,000 had some form of ability

grouping for their more able students, a similar survey conducted in 1948 (Heck, 1953) found that only 15 of those districts reported having special classes for their gifted students. Another study performed in Ohio in 1951 (Ohio Commission on Children and Youth, 1951) revealed that only 2% of the state's schools indicated they provided any specialized services whatsoever to this population.

One of the factors that no doubt contributed to the decreased interest in the education of the gifted during the early 1950's was an overall feeling of anti-intellectualism that swept the country during this period. Much of this thinking was exemplified by Senator Joseph McCarthy during his relentless attacks on what he perceived as communism and subversion within all levels of government and throughout our systems of higher education. An undercurrent of anti-intellectualism was apparent during the Presidential campaign of 1952 as well. Many people saw this election to be one between the "eggheads" (persons supporting the intellectual Adlai Stevenson) and the people of "common sense" (the followers of the Western-novel-reading Dwight D. Eisenhower). When Eisenhower won, Time magazine concluded that the outcome of the election demonstrated "an alarming fact long suspected: there is a wide and unhealthy gap between the American intellectuals and the people" (Spring, 1976, p. 5).

A Manpower Shortage Realized

During the mid-1950's, a number of occurrences pointed once again to a developing interest in programs for gifted students. Of particular concern was the acute shortage of professional manpower reported to the President by the National Security Resources Board (NSRB) in 1952 (Wolfe, 1952). NSRB estimated that, while the United States needed an additional 160,000 qualified elementary teachers, only 33,000 were being graduated. Likewise, NSRB calculated the annual demand for qualified engineers to be 30,000, but predicted that by 1954 only 17,000 new engineers would be graduating from the nation's colleges and universities. Finally, in regard to the nation's need for well-trained manpower to help conduct foreign policy, NSRB pointed out the fact that between 1948 and 1952 only 13 Americans had been awarded PhD's in the Russian language. In its report to the President, the Board concluded: "We are short of people. If we are to do everything we need to do for ourselves and for others, every person must count. We can afford no slippage."

Although a low national birth rate during the 1930's helped to contribute to this shortage of high-level manpower, public education came to receive the brunt of the criticism for this condition. Schools were charged with having too-soft curricula and not emphasizing basic skills. Many people argued that gifted and talented students were the most serious casualties of the schools' avoidance of academic rigor. Some, like Dael Wolfe of the Commission on Human Resources and Advanced Training, charged the public schools with failing to adequately stimulate or encourage academically gifted children to go beyond a secondary school education. According to Wolfe (1954):

> Fewer than half of the upper 25% of all high school graduates ever earn college degrees; only 6 out of 10 of the top 5% do. Society fails to secure the full benefit of many of its brightest youth because they do not secure the education that would enable them to work at the levels for which they are potentially qualified.

Others, like Admiral Rickover (1959), proclaimed that the schools' preoccupation with anti-intellectualism at this time was deeply hurting our technological and military race against Communism. Rickover expounded his belief that the cold war could be won through earlier identification and acceleration of academically gifted students, particularly within the area of science and engineering. Traveling throughout the country to spread this belief, Rickover often concluded his lectures with the statement: "It has been estimated that the efforts of less than one percent of the total population move the world forward. This small group is indispensable to the maintenance and advancement of our civilization" (p. 129).

Despite such efforts, programs for gifted and talented students, as well as federal interest in this population, remained largely stagnant during the mid 1950's. It was not until 1957 that an event would take place of such magnitude that Congress would be forced into an unprecedented flurry of activity related to the education of the gifted and talented.

The Launching of *Sputnik*

On October 4, 1957, the Soviet Union launched the world's first artificial satellite. Americans

anxiously held their breath and watched silently as the 184.5 pound *Sputnik* circled the globe. A furor of indignation engulfed the Congress. Representative Stuart Symington of Missouri demanded a special session. Senator Henry Jackson of Washington wanted the President to proclaim "a week of shame and danger." Majority Leader Lyndon Johnson screamed of the dire implications of this accomplishment:

> The Roman Empire controlled the world because it could build roads. Later when men moved to the sea the British Empire was dominant because it had ships. Now the Communists have established a foothold in outer space. (Manchester, 1973, p. 788)

The launching of *Sputnik* created an almost hysterical condition in American education. Without question, the schools became the scapegoat for our now second-class technological status to the Soviet Union. Commenting on the Russian feat before the Congress (Manchester, 1973), Senator William J. Fulbright of Arkansas bellowed: "The real challenge we face involves the very roots of our society. It involves our educational system, the source of our knowledge and cultural values" (p. 788). Congressional reaction was swift. On September 2, 1958, the Congress declared the existence of an educational emergency in this country. To meet this emergency, it passed the National Defense Education Act (NDEA).

NDEA: The Gifted As a Federal Priority

References to gifted and talented students were mentioned throughout NDEA (P. L. 85-864, 1958). In passing the Act, Congress declared that:

1. The security of the nation required the fullest development of the mental resources and technical skills of its young men and women.
2. The nation had to increase its efforts to identify and educate more of our talented individuals.
3. Although the states and local communities had to continue to retain control over and have primary responsibility for public education, the national interest required the federal government to provide assistance to those educational programs that were vital to our national defense. Thus, gifted and talented children became a special population eligible for federal assistance. Equally important was that, from the federal perspective, they also became regarded as a vital link to our national defense.

From 1958 to 1962, through the NDEA, Congress made over $900 million available for the following types of educational activities and programs believed vital to our national defense:

- Long-term, low-interest loans to college students, with up to 50% cancellation to students who opted to teach in public elementary and secondary schools. Special consideration was given to: (a) students with a superior academic background who expressed a desire to teach in elementary or secondary schools; and (b) students whose academic background indicated a superior capacity or preparation in science, mathematics, engineering, or a modern foreign language.
- Strengthened instruction in science, mathematics and modern foreign languages through provision of laboratory equipment, audiovisual materials, minor remodeling of facilities, and state supervisory services.
- Graduate fellowships and stipends to help increase the numbers of students in graduate programs, especially to those interested in teaching in institutions of higher education.
- Grants to state educational agencies to assist them in establishing and maintaining programs of testing and of guidance and counseling in secondary schools, and contracts with institutions of higher education for institutes which would provide training to improve the qualifications of counselors and guidance personnel in secondary schools.
- Improvement and extension of instruction in modern foreign language at all educational levels through the use of language and area centers, fellowships, research, and studies.
- Financial assistance to conduct, assist, and foster research and experimentation in the development and evaluation of projects involving television, radio, motion pictures, and related media of communication.
- Amendment of the Vocational Education Act of 1946 to authorize grants to states to assist with the training of individuals for employment as highly skilled technicians in occupations requiring scientific knowledge in fields necessary for the national defense.
- Establishment of the Science Information Council and a unit within the National Sci-

ence Foundation to help develop new or improved methods for making scientific information available.

- Grants to states to assist state education agencies in improving and strengthening statistical services.

Through monies from NDEA, services for gifted and talented students escalated to an all time high. Schools implemented a great variety of progressive educational programs and instructional strategies such as honor classes, nongraded schools, innovative math and science curricula, modular scheduling, programmed learning, early admissions to college, enrichment courses, and accelerated learning programs. According to a national survey conducted by the National Education Association in 1958 (Goldberg, 1965), approximately 77% of the secondary schools at that time were making some type of special provisions for their gifted students (100% in large cities and about 50% in small towns and suburban areas). Research activities and university interest in the gifted and talented also prospered during this time. One study (Albett, 1969) found that there were more articles and studies related to gifted education published between 1956 and 1959 than during the previous 30 years combined.

In summary, while the early 1950's proved to be one of the darkest periods in the history of gifted and talented education, the end of the decade proved to be one of the brightest. With the realization of the nation's acute shortage of professional manpower, and its decreasing ability to compete in the technological and military race with the Soviet Union as evidenced by the launching of *Sputnik*, America saw the vital need to develop special educational programs for its gifted and talented students. Our gifted populations became linked to the national defense and welfare of the country, and, as a result, federal interest and support for programs for these children reached an all-time high.

1960 to 1970: A Decade of Retrenchment and Rethinking

While the passage of the National Defense Education Act represented a further step in the evolution of federal involvement in the education of gifted and talented children, the 1960's proved to be a period of retrenchment and rethinking in regard to this population. With the tragic death of President John F. Kennedy, his dreams of a new age of excellence, which might have had an effect, if only indirectly, upon gifted and talented education, were all but dismantled. The "Whiz Kids" were replaced by the builders of the "Great Society." Public concern and governmental attention became focused on the educationally disadvantaged and economically deprived. Interest in the gifted and talented lessened.

This new emphasis had a number of profound implications for state and federal agencies dealing with gifted children. First, without public support many of the statutes, regulations, and policies concerning gifted education that had been fought for and won at the state and local levels during the late 1950's never became truly institutionalized. Second, the shift in priorities caused a substantial portion of federal expenditures intended for development of gifted programs to be spent on services which would benefit other students as well. Gifted program monies were often diverted to other, more general uses, such as guidance counselors, audio-visual equipment, and supplementary local and state school personnel.

In response to this changing public attitude, the Congress passed an extraordinary series of laws aimed at benefitting the economically and educationally disadvantaged which culminated in the passage of the Elementary and Secondary Education Act (ESEA) (P. L. 89-10, 1965). Through the ESEA, over $1.3 billion dollars was allocated in 1965 alone to the education of disadvantaged children. The main thrust of this Act was toward the educationally and culturally deprived, with little attention directed toward the gifted and talented. However, there were advocacy groups at this time, such as The Council for Exceptional Children, that continued to call for an increased federal role in the education of our more able students. Largely as a result of such efforts, two identical bills regarding the gifted and talented were introduced during the first session of the 91st Congress. The first, S.718, was introduced into the Senate Chamber on January 28, 1969, by Senators Jacob Javits of New York and Winston Prouty of Vermont. In presenting the bill, Javits (1969) eloquently described the need for this legislation to his constituents:

> In 1958, in response to *Sputnik* the Congress enacted the National Defense Edu-

cation Act to identify our most gifted students and to stimulate resources toward meeting the educational needs of these students. However, today, nearly a decade since the passage of NDEA, the Federal effort toward meeting the needs of the gifted and talented has diminished to the point that there is not one single Federal law or program devoting significant resources toward the education of gifted and talented youth, nor does the U.S. Office of Education employ anyone with responsibility in this area.

Some States have developed programs for the gifted and talented. However, little growth has taken place. Only about one-third of the states have established efforts to assess and improve the education of gifted and talented children. Study commissions have been formed, theoretical foundations established; however, very few of the over 3 million gifted and talented children of this nation are receiving the special education services they need.

Our country cannot afford to allow this to continue. We are a nation concerned about the conservation of our most treasured natural resources; the time has come for us to conserve our most precious resource, our gifted and talented children. (p. S971)

Following Javits' introduction, Senator Prouty addressed the Senate Chamber and described this population in terms of their educational disadvantage and of the problems gifted and talented children often encounter in school systems that are unaware of their special needs:

> During the past few years Congress has enacted far-reaching legislation enabling the Federal Government to assist States, localities, school districts, and universities in providing an adequate education for all Americans. Recognizing that certain groups of youth have special problems which impede the learning process, I and the other members of the Education Subcommittee of the Labor and Public Welfare Committee, have sponsored legislation aimed particularly at enabling schools to develop programs for the disadvantaged, handicapped, or non-English-speaking child. These programs are now reaching large numbers of American youth who ordinarily could not derive benefit from educational facilities in their communities.
>
> However, Mr. President, there remains one large group of youth which is not being assisted. These are the gifted children of our Nation, comprising from 3 to 5% of the school population, or numbering over 3 million. The talented child has often been the forgotten child and the under-achiever despite his extraordinary potential because he becomes bored with unchallenging programs. It is often assumed, for example, that it is the less intelligent child who leaves school. A study conducted by Dr. Joseph L. French of Pennsylvania State University has indicated, however, that 11% of the high school dropouts, or some 80,000 youths having IQ's over 110 leave school before graduation each year. These youths have the intellectual capabilities to become professionals and leaders. We cannot afford to waste their talents. (p. S971)

On the same day, Representative John N. Erlenborn (1969) of Illinois on behalf of himself and Representatives William H. Ayres of Ohio, Albert Quie of Minnesota, Ogden Reid of New York, William Scherle of Iowa, Marvin Esch of Michigan, and Edwin Eshleman of Pennsylvania, introduced an identical bill, H.R. 4807, The Gifted and Talented Children Educational Assistance Act, into the House Chamber. In presenting the House version of the bill, Representative Erlenborn made the following remarks:

> Today, we ask our Nation to adopt as policy the fact that the education of these exceptional children is a national concern.
>
> This bill provides no money; nor does it earmark any funds. Experience has shown us that funds alone are not the answer to the problems facing us. Instead, we must attack the attitudes that bind us to the status quo. (p. H517)

To change the status quo attitudes that surrounded gifted and talented education during the 1960's, this legislation provided for the following:

1. *The first federal definition of gifted and talented children was established.* The act amended Section 1201 of the Higher Education Act of 1965 by adding the following definition: "The term 'gifted and talented children' means in accordance with objective criteria prescribed by the Commissioner, children who have outstanding intellectual ability or creative talent."

2. *Title V "Grants to Strengthen State Departments of Education" of the Elementary and Secondary Education Act (ESEA) was amended by adding the phrase "the gifted and talented."* According to Senator Javits, the Congress had long realized that education was a state responsibility. As such, beginning in 1965 they had established a program under Title V of ESEA to "assist State Departments of Education to upgrade and expand their role in the education process." By 1969, however, it was discovered that only 13 of the 50 states had one or more full-time staff members assigned to programs for the gifted and talented. In 21 states no one was responsible at the state level for these programs. The importance of state-level personnel was illustrated by the fact that 9 out of 10 gifted and talented children at that time came from states that employed such full-time personnel. By specifically identifying the gifted and talented as a potential target population under Title V, the Congress hoped that more states would use those monies to employ state-level personnel to oversee gifted programs.
3. *The Education Professions Development Act (EPDA), Title V, Part C (Fellowships for Teachers) and Section 521 (Statement of Purpose) of the Higher Education Act was amended by adding "gifted and talented" as a specified population.* On June 29, 1967, the Congress enacted the Education Professions Development Act (EPDA) (P. L. 90-35, 1967) to amend and extend Title V of the Higher Education Act of 1965. The intended purpose of EPDA was to improve the quality of teaching in the country and to meet the need for adequately trained educational personnel in a number of specific priority areas. The Act sought to accomplish this by: (a) developing information on the actual needs for educational personnel, both present and long-range; (b) providing a broad range of high-quality training and retraining opportunities, responsive to changing manpower needs; (c) attracting a greater number of qualified persons into the teaching profession; (d) attracting persons who could stimulate creativity in the arts and other skills to undertake short-term or long-term assignments in education; and (e) helping to make educational personnel training programs more responsive to the needs of schools and colleges. Upon introducing the bill into the House Chamber, Representative Erlenborn (1969) commented on the importance of this particular provision by stating:

> There is a lack of trained personnel to administer and provide education for gifted and talented children. This amendment will make the preparation of such personnel a priority to which the Education Professions Development Act should focus its attention. At present there are only 26 colleges and universities in the Nation offering programs to prepare teachers and other personnel to work with gifted and talented children. If programs for these children are to be increased to any substantial degree, there will need to be a substantial increase in the number of personnel training programs as well as the number of personnel prepared. (p. H517)

4. *Title III "Supplementary Educational Centers and Services" of ESEA was amended by adding "special programs for the gifted and talented" to those programs and services previously mentioned in the Title.* The Congress legislated Title III, "Supplementary Educational Centers and Services," of the Elementary and Secondary Education Act (ESEA) (P. L. 89-10, 1965) for three basic reasons. First, passage of Title III emphasized the Congressional belief that the initiative and responsibility for the operation of school programs rested with state and local authority. Second, it indicated that the financial strain on the budgets of many local education agencies was such that it was impossible for them to implement many of the programs and services that researchers and educators deemed essential for the effective operation of schools. Finally, it stated that local education agencies should not have to underwrite the full burden of providing model or exemplary school programs that would benefit the rest of the state or the nation. The basic purpose of Title III of ESEA, therefore, was to stimulate and assist local education agencies with the design and development of supplementary educational services that were not often available or in sufficient quality or quantity. In addition, Title III was also designed to assist in the establishment of exemplary elementary and secondary educational programs to serve as models for regular school programs.

Describing the justification and the rationale for including this amendment in the bill, Senator Javits (1969) remarked:

> Because of their unique learning nature, gifted and talented children require many services and opportunities beyond the confines of the classroom or school. Title III has demonstrated itself to be an effective tool for helping school districts to provide such services and opportunities on a multi-school or regional basis. It is the intent of this bill to focus some of the efforts of Title III on meeting the unique program needs of gifted and talented children. (p. S971)

5. *The U.S. Commissioner of Education was directed to conduct a study.* The Act instructed the Commissioner to conduct a national investigation to determine the unique needs of the gifted population and to further suggest how the federal government might best allocate its resources to meet these needs. More specifically, the Commission, through this study, was to:

   > (a) determine the extent to which special educational assistance programs are necessary or useful to meet the needs of gifted and talented children; (b) show which existing federal educational assistance programs are being used to meet the needs of gifted and talented children; (c) evaluate how existing federal educational assistance programs can be more effectively used to meet these needs; and (d) recommend which new programs, if any, are needed to meet these needs. (p. S971)

   The Commissioner was directed to report his findings, together with his recommendations, to the Congress no later than one year after the enactment of the Act.

The Gifted and Talented Children's Education Assistance Act was unanimously passed in the House of Representatives on October 6, 1969, and subsequently passed by the Senate on February 19, 1970. The bill was signed into law on April 13, 1970, as Section 806, "Provisions related to gifted and talented children," of the Elementary and Secondary Education Amendments of 1969 (P. L. 91-230). Even though the Act did not earmark any existing funds or require new programs, it did nevertheless express the grave concern of the Congress over the lessening national attention that was being provided to the gifted and talented during the 1960's. It also put on record the intention of Congress that the Office of Education allocate monies under ESEA Titles III and V for gifted and talented programs.

1971 through 1980: A Period of Active Federal Involvement

Beginning with the passage of P. L. 91-230, the federal government entered into a much more active role with regard to the gifted and talented during the decade of the 1970's. In keeping with the Congressional expectations set forth by the Gifted and Talented Children's Educational Assistance Act of 1969, then Commissioner of Education, Sydney Marland, submitted to the Congress on October 6, 1971, his nationwide assessment regarding the status of gifted and talented education in the United States. The major findings and conclusions of the Marland Report (1972) can be summarized by the following 12 statements:

- A conservative estimate of the gifted and talented population ranges between 1.5 and 2.5 million children out of a total elementary and secondary population (1970 estimate) of 51.6 million.
- Existing services to the gifted and talented do not reach large and significant subpopulations (e.g. minorities and disadvantaged) and serve only a very small percentage of the gifted and talented population generally.
- Differentiated education for the gifted and talented is presently perceived as a very low priority at federal, state, and most local levels of government and educational administration.
- Although 21 states have legislation to provide resources to school districts for services to the gifted and talented, such legislation in many cases merely represents intent.
- Even where there is a legal or administrative basis for provision of services, funding priorities, crisis concerns, and lack of personnel cause programs for the gifted to be miniscule or theoretical.
- There is an enormous individual and social cost when talent among the nation's children and youth goes undiscovered and undeveloped. These students cannot ordinarily excel without assistance.
- Identification of the gifted is hampered not only by costs of appropriate testing—when these methods are known and adopted—but

also by apathy and even hostility among teachers, administrators, guidance counselors, and psychologists.

- Gifted and talented children are, in fact, deprived, and can suffer psychological damage and permanent impairment of their abilities to function well. Such deprivation is equal to or greater than that suffered by any other population with special needs served by the Office of Education.
- Special services for the gifted and talented will also serve other target populations (such as the disadvantaged) singled out for attention and support.
- Services provided to gifted and talented children can and do produce significant and measurable outcomes.
- States and local communities look to the federal government for leadership in this area of education, with or without massive funding.
- The federal role in delivery of services to the gifted and talented is presently all but nonexistent.

The report proved important to the gifted movement, for two additional reasons. First, as required by P. L. 91-230 (i.e., the Commissioner shall define "gifted and talented"), it established the following definition of gifted and talented children for purposes of federal education programs:

> Gifted and talented children are those identified by professionally qualified persons who by virtue of outstanding abilities, are capable of high performance. These are children who require differentiated educational programs and/or services beyond those normally provided by the regular school program in order to realize their contribution to self and society. Children capable of high performance include those with demonstrated achievement and/or potential ability in any of the following areas, singly or in combination:
>
> 1. general intellectual ability
> 2. specific academic aptitude
> 3. creative or productive thinking
> 4. leadership ability
> 5. visual and performing arts
> 6. psychomotor ability. (p. 2)

In addition, it suggested that the utilization of these criteria for the identification of gifted and talented children would encompass a minimum of 3% to 5% of the school population.

Second, from the perspective of public policy, the report depicted a rather dismal picture of how existing federal educational assistance programs were being used to meet the needs of gifted and talented children. The study found, for example, that less than 15% of the states were spending any of their ESEA Title I monies to identify or develop special programs to meet the needs of gifted and talented youngsters from deprived areas. Furthermore, it discovered that only 10% of the states had used ESEA Title III monies for programs or services directed at the gifted and talented, and that only nine of the states had used ESEA Title V monies to strengthen their programs for these students. Finally, the report concluded that 62% of the states had used *none* of the available federal resources to provide for their gifted and talented children.

The implications extrapolated from the Marland Report were clear—efforts to stimulate the development of gifted and talented programs through the use of unspecified federal appropriations were not directly benefiting gifted children. Therefore, a method was needed by which federal assistance and appropriations could directly reach gifted and talented students as well as those agencies most concerned with their education.

New Legislation Introduced

Responding to the needs set forth in the Marland Report, three almost identical bills regarding gifted and talented education were introduced during the first session of the 93rd Congress. S.874, the Gifted and Talented Children's Educational Assistance Act, was introduced into the Senate Chamber on February 15, 1973, by Senators Jacob Javits of New York and Harrison Williams of New Jersey. In presenting the bill, Javits (1973) stated the following facts in support of the need for new legislation for the gifted.

> The Office of Education has pointed out that only 4% of the estimated 2 million gifted and talented youth received planned, expert guidance and encouragement. In one State a study found that 55% of the gifted students were working below their mental abilities. In another State, 18% of high school dropouts were gifted students. Clearly this is a waste of a most valuable national resource. It is vital that the full potential of these young people be developed.

> Only 22 States have laws to provide funds for education of the gifted and many of these programs are not funded. And in only 10 States, have the State departments of education engaged at least one full-time staff person to identify and help the gifted. This points to the need for a Federal program to stimulate effective State and local action.

Senator Williams added the following comments:

> Section 806C of Public Law 91-230 authorized the Commissioner of Education to prepare a report on gifted and talented children and to examine problems, needs, and recommendations for improving services to these children. The report, completed late in 1971, called for an increased role for Federal and State education agencies in identifying and assisting gifted and talented children through creation of educational services designed for them alone. It was the report's conclusion that present education programs will not improve learning conditions for such children without substantial changes which will enable gifted and talented children to benefit from these programs.

Essentially, S.874 called for the following:

1. The establishment of an administrative unit for the gifted and talented within the U.S. Office of Education.
2. The authorization of $1 million in fiscal years 1973–75 for the establishment of a National Clearinghouse on Gifted and Talented Children and Youth.
3. The authorization of $50 million in FY 1973 and $60 million in FY 1974 and 1975 for grants to states to initiate, expand, and improve programs for the gifted and talented.
4. The authorization of $15 million in FY 1973, $20 million in FY 1974, and $25 million in FY 1975 for (a) grants for the training of personnel engaged in or preparing to engage in the education of the gifted and talented or as supervisors of such personnel; and (b) grants for the training of leadership personnel, including but not limited to teacher trainers, school administrators, supervisors, researchers, and State consultants.
5. The authorization of $14 million in FY 1973, $16 million in FY 1974, and $18 million in FY 1975 to the National Institute of Education for research and related purposes related to the education of gifted and talented children and youth.

Two comments should be made with regard to S.874 before proceeding. First, the bill called for a considerable increase in appropriations for the gifted and talented (e.g., $80 million for FY 1973; $97 million for FY 1974, and $104 million for FY 1975). Second, S.874 closely followed a Congressional format that had been previously applied to a number of bills, including those for the handicapped, that grew into much larger programs of federal assistance (e.g., it sought to establish a basic state grant program along with separate funding categories for areas such as personnel development, leadership training, research, and the establishment of a clearinghouse). Unfortunately for the gifted and talented, this legislation package never really materialized, as will be described next.

The other two bills that emerged during the 93rd Congress with respect to the gifted and talented were introduced in the House of Representatives. H.R. 5718 was introduced into the House Chamber by William Lehman of Florida on March 15, 1978, and H.R. 7100 by Dominick Daniels of New Jersey on April 17, 1978. As was previously stated, both bills were identical for all practical purposes to the Javits/Williams Senate proposal. To the dismay of supporters of the bills, however, neither emerged from the House Subcommittee on General Education to which they were referred for debate. Advocates for the gifted thus turned their eyes and their attention to the Senate.

Unlike H.R. 5718 and H.R. 7100, S. 874 did receive considerable attention from the subcommittee to which it was referred. Unfortunately, even though it was reported out of Subcommittee and became incorporated into the Senate's 1974 proposed amendments to the Elementary and Secondary Education Act (S. 1539), S. 874 did suffer considerable change during the legislative process. The bill became involved in a much larger Congressional struggle involving the consolidation of a number of federal entitlements and the development of a new Commissioner discretionary grant program. As a result, gifted and talented education became one of six designated special projects to which the U.S. Commissioner was directed by the Congress to pay particular attention. The other five included: community schools, career education, consumer education, women's equity in

education, and metric education. When the Education Amendments of 1974 (P. L. 93-380) were signed into law on August 21, 1974, gifted and talented education became a part of the Special Projects Act.

Section 404 of P. L. 93-380, entitled "Gifted and Talented Children," looked quite different from the original legislation introduced by Senators Javits and Williams. The final bill that emerged from the legislative process called for federal involvement in the following five areas:

1. It established an administrative unit within the U.S. Office of Education. Prior to this, an Office of Gifted and Talented had been administratively created in 1972 and housed, without statutory authority, within the U.S. Bureau of Education for the Handicapped.
2. The Act provided for the creation of a National Clearinghouse for the Gifted and Talented.
3. It funded grants to state and local education agencies.
4. It provided grants for training, research, and model projects related to the gifted and talented.
5. It authorized an annual appropriation not to exceed $12.25 million.

To some, the legislative compromises that took place to assure the passage of Section 404 of P. L. 93-380 were disappointing. These individuals pointed to the reduction of authorization levels from $80 million to $12.25 million as representing only a token interest on the part of the federal government in providing the services truly needed by this population. Others, however, saw the passage of this law to be a milestone in the history of federal involvement in gifted and talented education.

A total of $2.56 million was appropriated to the Commissioner in 1975 to carry out the provisions of the Section 404 of the Act, and with this entitlement, gifted and talented children at the elementary and secondary educational levels, not postsecondary students or specific programs, became the direct recipients of federal funds and assistance.

A Call for an Expanded Federal Role

While the early and mid 1970's did see considerable changes with regard to the development of educational programs for the gifted and talented, many people still saw the need for greater federal participation in the provision of these services. Appearing before the House Subcommittee on Elementary, Secondary, and Vocational Education, Dorothy Sisk (1977), then Acting Director of the U.S. Office of Gifted and Talented, indicated that the aggregate number of gifted and talented children reported served had increased from 4% of the potential population in 1972 to 14% in 1977. While this number did demonstrate considerable progress, Sisk cautioned that this increase nevertheless left 86% of the potential gifted and talented children in this country still not receiving the special education they needed and deserved.

Responding to this need, Representative Carl Pursell of Michigan introduced H.R. 11533, The Gifted and Talented Children's Education Act of 1978, into the House of Representatives on March 14, 1978. Pursell's bill called for the following:

1. Of the monies appropriated for the Act, the U.S. Commissioner was to receive 55% for grants to local education agencies for the planning, establishment, and improvement of special education programs for the gifted and talented.
2. State education agencies were to receive 30% for programs for the gifted and talented, as well as for the training of personnel to meet the special education needs of these children.
3. The remaining 15% of the bill's appropriations was to be allocated to the Commissioner for grants for research and demonstration, including the authority for a clearinghouse.
4. The act called for gifted and talented children to be defined as:

   > children and, where applicable, youth, who are identified at the preschool, elementary or secondary level as possessing demonstrated or potential abilities that give evidence of high performance capability in areas such as intellectual, creative, specific academic, or leadership ability or in performing and visual arts, who by reason thereof, require special education services (Pursell, 1978, p. H2028).

5. In order to carry out its provisions, the Act authorized the following funds: $10 million for fiscal year 1979; $15 million for fiscal year 1980; $20 million for fiscal year 1981; and $25 million for fiscal years 1982 and 1983.

On the following day, March 15, 1978, Senator Jacob Javits (1978) of New York introduced S. 2749, Gifted and Talented Children—Education Consolidation and Improvement, into the Senate Chamber. Javits' bill called for the transfer of gifted and talented education out of the Special Projects Act and into a newly created Part D under Title IV (Libraries, Learning Resources, Education Innovation, and Support) of the Elementary and Secondary Education Act. The bill called for an authorization of $50 million in fiscal year 1979, which was to be allotted to states on the basis of their relative proportion of school-age children, ages 5 to 17 inclusive.

To encourage intrastate growth, states were expected to match federal support with their own fiscal entitlements and gradually phase into a 50:50 ratio of state-federal funds by fiscal year 1983. Of the total funds appropriated under the Act, 75% were to be reserved for states to distribute to their local education agencies on a competitive grant basis. The Commissioner of Education was to be given discretionary authority over the remaining 25% of the total funds for activities similar to those then being funded under the gifted and talented component of the Special Projects Act, namely, the training of leadership personnel and educators, model projects of identification and education, and the operation of an information clearinghouse.

A third bill relating to the education of gifted and talented children was introduced into the 95th Congress by Senator Robert Stafford (1978) of Vermont. The Stafford amendment—Amendment No. 1761—called for the transfer of gifted and talented education out of the Special Projects Act and into the Education of the Handicapped Act (EHA) under a new Part H.

Compromise and Final Passage of P. L. 95-561

The House version of the Gifted and Talented Children's Education Act of 1978 was successfully reported out of the House Education and Labor Committee on April 5, 1978. The passage of this amendment, from the perspective of federal educational policy, was significant in that it represented the first time that the U.S. House of Representatives had originated its own provision for the education of gifted and talented children. The Senate version, on the other hand, was approved by the Senate Human Resources Committee on May 5, 1978, when a compromise was reached between Senators Javits and Stafford. The final Senate bill called for creation of a combination state-formula grant and Commissioner-discretionary grant program.

Under the bill, 75% of the monies allocated by the Act were to be distributed to the states based on their relative school-age population, ages 5 to 17 inclusive. State education agencies, in turn, were to be required to distribute 90% of these funds to local education agencies on a competitive grant basis. At the same time, the Commissioner was to be given discretionary authority over the remaining 25% of the funds for activities similar to those then funded under the gifted and talented component of the Special Projects Act. Finally, the Senate bill provided that, before any of Title IV of ESEA could be funded, at least 5% of the total appropriations of this title had to be provided for gifted and talented education.

When the Senate version reached the chamber floor for final approval, Warren Magnuson of Washington, Chairman of the Senate Committee on Appropriations, led a successful fight to delete the 5% provision from the bill. Seeing this happen, and realizing the small amount of appropriations (i.e., $2.56 million) that would then be allocated to this program, many advocates for the gifted and talented became convinced that the state-formula grant program proposed by the Senate was unrealistic at that point in time. Furthermore, it was feared that the inclusion of gifted and talented education in Title IV would jeopardize a major source of additional funding for this population, namely, Title IV-C monies.

The final version of this legislation reflected both concerns. First, after considerable debate, the Senate conceded that the Act should become free-standing and agreed to the House recommendation that it be placed in Title IX (Additional Programs) of the Education Amendments of 1978. Second, a major compromise was reached with respect to the type of program to be established.

The Gifted and Talented Children's Education Act (P. L. 96-561, 1978) began as a discretionary state grant program. Essentially, by submitting an application that fully met the Act's requirements and was approved by the Commissioner, any SEA was entitled to receive at least $50,000 under this part. Once the level of appropriations for the Act reached $15 million, however, such monies were to be distributed by a state formula grant program based upon each state's school-age population, ages 5 to 17 inclusive.

Overall, the new bill allowed for financial entitlements to state education agencies to assist them in the planning, development, operation, and improvement of programs designed to meet the educational needs of gifted and talented children. In addition, the U.S. Commissioner was authorized under this Act to make discretionary grants for activities such as the training of personnel engaged in the education of gifted and talented children or the supervision of such personnel; the training of national leadership personnel; model projects, research, and demonstration programs; statewide planning activities; and the establishment of a clearinghouse. The Act officially defined gifted and talented children as:

> Children and whenever applicable, youth, who are identified at the preschool, elementary or secondary level as possessing demonstrated or potential abilities that give evidence of high performance responsibility in areas such as intellectual, creative, specific academic, or leadership ability, or in the performing and visual arts, and who by reason thereof, require services or activities not ordinarily provided by the school.

To carry out these activities, the Act authorized the appropriation of $25 million for fiscal year 1979, $30 million for 1980, $35 million for 1981, $40 million for 1982, and $50 million for 1983.

1981—The Pendulum Swings Back

Many who celebrated the passage of the Gifted and Talented Children's Education Act of 1978 and the increased federal interest in this population found the basis for rejoicing was short-lived. Similar to what had happened in the 1960's, programs for gifted and talented children again became embroiled in a political power struggle within the Washington establishment. Ronald Reagan's election as 41st President of the United States brought a philosophy entitled "new federalism," whereby legislation was quickly initiated to "restore education back to the people."

Endorsing this premise, Representative John Ashbrook (R-OH), senior ranking Republican on the House Education and Labor Committee, reintroduced into the 97th Congress the Education Consolidation and Improvement Act of 1981 as a part of a budget reduction bill to reduce federal spending in fiscal years 1982, 1983, and 1984. Unfortunately, gifted and talented education thus became 1 of 30 small, largely categorical education programs to be consolidated into a single block grant under Title II of this Act. This consolidation caused grave concern on the part of many advocates who felt that, without direct appropriation, the progress achieved at the federal level would once again wane and programs for the gifted and talented would fall into a period of benign neglect. There are a number of indicators among the states, however, that strongly suggest otherwise. According to a longitudinal study begun in 1976 (Zettel, 1980), the following significant developments have already occurred in state policy toward the delivery of services for gifted and talented children:

- Thirty-nine states currently have legislation that makes mention of or defines gifted and talented children.
- Forty-four states presently have regulations or guidelines regarding the screening and identification of these children.
- Forty-eight states reported having individuals at the state level who devote 50% or more of their time to gifted and talented education. Forty-two states have full-time persons employed in these positions.
- Seventeen states currently either require or suggest the use of individualized education programs (IEP's) for their gifted and talented students.
- Nineteen states presently require or suggest the use of due process procedures in the identification, evaluation, and placement of their gifted and talented children.
- Forty-three states indicated they served a total of 766,759 gifted and talented students during school year 1979–80. This figure represents over a 16% increase in the number of children so served over the previous year and a 100% increase in the number served over the past five years.
- Fifteen states mandated the identification and provision of appropriate educational services for their gifted and talented children during the 1980–81 school year.
- Thirty-eight states reported allocating a total of $121,772,238 for gifted and talented education during school year 1979–80. This amount represents nearly a 17%, or $17.5 million, increase in the total dollars allocated to this population over the previous school

year. Overall, funding for gifted and talented education has seen a 112% increase over the past 5 years, with an additional $64.4 million being spent on these children from state revenues.

Conclusion

In the words of Thomas Arnold, there are "[two] things we ought to learn from history: one, that we are not in ourselves superior to our fathers; another that we are shamefully and monstrously inferior to them, if we do not advance beyond them." Hopefully, advocates for increased federal support for the gifted and talented have learned by now that periods of lessening federal interest in this population are invariably followed by intervals of considerable Congressional activity. As such, we should not become complacent with the present level of federal commitment; rather, we must prepare now for the next period of Congressional interest and support which will unquestionably follow.

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CHAPTER 6

Interpreting the Rights of Exceptional Citizens Through Judicial Action

BARBARA J. SMITH
JOSEPHINE G. BARRESI

A significant factor affecting the trends in litigation today is the influence of federal and state legislation guaranteeing certain rights once obtainable only through the courts. Courts have historically preferred to interpret statutory rights rather than analyze and interpret constitutional provisions. Courts today are largely interpreting, clarifying, or expanding the basic rights and provisions of federal laws—mainly The Education of the Handicapped Act (EHA), as amended by P. L. 94-142 and Section 504 of the Rehabilitation Act of 1973—and corresponding state mandates, rather than breaking new ground or ruling on constitutional issues.

The goal of this Chapter is to summarize significant cases and issues that have arisen since 1975. The cases have been selected to highlight various issues rather than to offer a comprehensive review of all case law. The intent is to present the trends in litigation, describe what the courts are being asked to do as we move into a new decade, and report precedential decisions or actions during the past five years as they relate to the education of exceptional students in the following six areas: discrimination under Section 504; compensatory services; suspension and expulsion; bilingual special education; nondiscriminatory evaluation; and extended school year.

Discrimination: Section 504

Because Section 504 of the Rehabilitation Act of 1973 assures a free appropriate education to handicapped students, much the same as Part B of The Education of the Handicapped Act (P. L. 94-142), many actions have been filed under Section 504 which seek to affirm many of the same rights established under P. L. 94-142. Rights such as access to a free appropriate special education and related services, and placement of handicapped students in the least restrictive environment, have been sought and affirmed under both statutes.

The main thrust of Section 504, however, is accessibility to handicapped persons of programs that receive federal assistance. The regulations governing 504 prohibit recipients of federal aid from excluding handicapped persons from their programs or denying them services because the recipient's facilities are claimed to be unusable due to architectural, communication, or environmental barriers. Several aspects of 504 have required judicial interpretation: accessibility and the criteria of "otherwise qualified;" existence of a private right of action; and the need for individuals seeking judicial relief to first exhaust administrative remedies.

The first Section 504 case to reach the scrutiny of the U.S. Supreme Court was *Davis* v. *Southeastern Community College* (1979). It was brought on behalf of a deaf applicant to a nursing program and pertained to the applicability of the statute and subsequent regulations to clinical training program entrance qualifications. The Court ruled that the refusal of the college to admit Davis to the nursing program did not constitute a violation of Section 504, which prohibits discrimination by federally funded programs against an "otherwise qualified" handicapped person solely on the basis of handicap. In reaching the decision, the high Court necessarily defined the 504 language with respect to the "otherwise qualified handicapped individual" portion of the statute. It found that, in the case of a clinical training program involving public safety, nothing in the language or history of Section 504 limits a professional school from requiring necessary physical qualifications.

Definition of "Otherwise Qualified"

In interpreting whether Section 504 allows for physical requirements, the Court reviewed the development of the term "otherwise qualified handicapped individual." Pointing to the lower court's definition that applicants must be considered without regard to a handicapping condition, the Court stated:

> Taken literally, this holding would prevent an institution from taking into account any limitation resulting from the handicap, however disabling. It assumes, in effect, that a person need not meet legitimate physical requirements in order to be "otherwise qualified." We think the understanding of the District Court is closer to the plain meaning of the statutory language. An otherwise qualified person is one who is able to meet all of a program's requirements *in spite of his handicap.* (*Davis* v. *Southeastern Community College*, slip op , p. 7; emphasis added)

Physical Requirements

Justice Powell continued the question of allowable physical requirements by turning to regulations which state "with respect to postsecondary and vocational education services, a handicapped person who meets the academic and technical standards requisite to admission or participation in the [school's] education program" is an otherwise qualified person. Powell continued by referring to an explanatory note in the regulations which states: "The term 'technical standards' refers to all nonacademic admissions criteria that are essential to participation in the program in question." Finally, Powell concluded that "a further note emphasizes that legitimate physical qualifications may be essential to participation in particular programs. We think it clear, therefore, that HEW interprets 'other' qualifications which a handicapped person may be required to meet as including necessary physical qualifications" (p. 7).

In determining whether Southeastern's requirements were "essential," the Court reviewed the facts of the audiologist's report and the report of the Executive Director of the North Carolina Board of Nursing. The Director concluded that "the . . . hearing disability made it unsafe for her to practice as a nurse" (p. 2). Further, "it would be impossible for [Davis] to participate safely in the normal clinical training program, and those modifications that would be necessary to enable safe participation would prevent her from realizing the benefits of the program" (p. 2). It was pointed out that "nothing less than close individual attention by a nursing instructor would be sufficient to ensure patient safety if [Davis] took part in the clinical phase of the nursing program" (p. 10). "In light of respondent's inability to function in clinical courses without close supervision, Southeastern, with prudence, could allow her to take only academic classes. Whatever benefits [Davis] might realize from such a course of study, she would not receive even a rough equivalent of the training a nursing program normally gives. Such a fundamental alteration in the nature of a program is far more than the 'modification' the regulation requires" (p. 11).

Thus, the court found "Southeastern's unwillingness to make major adjustments in its nursing program does not constitute . . . discrimination . . . [it] is undisputed that [Davis] could not participate in Southeastern's nursing program unless the standards were substantially lowered. Section 504 imposes no requirement upon an educational institution to lower or to effect substantial modifications of standards to accommodate a handicapped person" (p. 14).

The court made clear, however, that this ruling applies to the *particular* college training program and the *particular* handicapped applicant and does not preclude the possibility of other situations constituting illegal discrimination:

> We do not suggest that the line between a lawful refusal to extend affirmative action and illegal discrimination against handicapped persons always will be clear. It is possible to envision situations where an insistence on continuing past requirements and practices might arbitrarily deprive genuinely qualified handicapped persons of the opportunity to participate in a covered program. Thus situations may arise where refusal to modify an existing program might become unreasonable and discriminatory. (p. 13)

Private Right of Action

The Supreme Court in *Davis* affirmed the right of an individual to seek judicial relief under Section 504. This private right of action has been upheld in other courts in many of the cases cited elsewhere in this Chapter. Of note is a suit, *Camenish* v. *University of Texas* (1980), brought on behalf of a deaf graduate student who was denied the services of an interpreter. Without the interpreter, the student would have been unable to complete his master's degree during a time frame upon which his continued employment depended.

The court of appeals in *Camenish* found Congressional intent to grant a private right of action by citing a Congressional report of the Section 504 debates during Senate action (Senate Report No. 93-1297, 93rd Congressional Session 39–40). The opinion cites the Senate Report as giving clear evidence of Congressional intention to grant a private right to legal action. The Senate Report states that the approach to Section 504 implementation "closely follows Title VI [the Civil Rights Act of 1967] including permitting a judicial remedy through private action" (p. 39–40).

Administrative Remedies

The judiciary in *Larry P.* v. *Riles* (1979), in addition to affirming a private right of action under Section 504 like the court in *Camenish*, also upheld the plaintiff's argument that Section 504 does not require individuals to exhaust all administrative remedies before seeking judicial relief. Defendents held that by developing a procedure for administrative review, the Department of Health, Education and Welfare (HEW) in its regulations intended for the review to be exhausted before court action. However, Judge Peckham, citing case history (*Davis* v. *Southeastern Community College*, 1979; *Lora* v. *Board of Education*, 1978) stated that "it is abundantly clear that such exhaustion would have been meaningless and superfluous" (p. 55).

Compensatory Services

Recently, in light of current right-to-education policies, the courts have awarded educational services to compensate persons who failed to receive an appropriate education in the past because (a) they had been misclassified as handicapped and therefore received inadequate programming and/or (b) they had been excluded from services altogether on the basis of possessing a handicap. Thus, the courts expanded the right to education and habilitation beyond the concept of a right to receive current services to include a right to *have received* appropriate services, including special education. Compensatory education has traditionally referred to a predetermined instructional program provided to a student whose program requires specialized or additional services to compensate for an educationally and/or economically deprived background. The most well-known program is Title I of the Elementary and Secondary Education Act (now Chapter I of the Education Consolidation and Improvement Act of 1981). However, the courts have expanded the scope of the notion of compensatory services to include compensation for a loss of educational opportunity due to illegal acts of commission or omission by the state.

In *Lopez* v. *Salida* (1978), a Colorado school district was ordered to provide an appropriate education for a handicapped high school student beyond the age of 21 to compensate for an improper exclusion. Entered on January 20, 1978, in State District Court for the County of Denver, the consent decree required the district to develop and pay for a program of appropriately designed education for two years at a cost of

about $5,000 a year. The plaintiff, who was receiving special education services for learning and behavioral problems, was involved in a fight at school with another student. When administrators attempted disciplinary measures, he reacted in such a manner that they assumed he was dangerous. Excluded without formal action in November 1974, the plaintiff's requests for readmission were repeatedly denied. In September 1976, the school formally denied admittance. Subsequently, the boy's attorney challenged the exclusion, resulting in the district holding several staff meetings during the fall of 1976 to determine an appropriate placement. However, the district was unable to locate an appropriate placement during the year, and the suit was filed against them in June 1977. As a result of the suit, the boy was awarded services from a community college and individualized instruction and counseling with a goal of passing the Graduate Equivalency Diploma Test (GEDT).

Two other court orders awarding compensatory services were *Mattie T.* v. *Holladay* (1979) and *North Carolina Association for Retarded Citizens (NCARC), et al.* v. *The State of North Carolina, et al.* (1979). It is noteworthy that both of these comprehensive right-to-education suits included in their long-awaited settlements compensatory services for those persons who, prior to settlement of the cases, had not received appropriate services.

Mattie T. involves both the misclassification of nonhandicapped children who were inappropriately placed in special education classes, as well as children who, because of their handicaps, had either been excluded entirely from services or received inappropriate services. The court found that the state had failed to meet its responsibilities under the Education of the Handicapped Act by denying the plaintiffs' right to:

- Procedural safeguards to challenge educational placement decisions.
- A program to locate all handicapped children in the state.
- Nondiscriminatory evaluation procedures.
- Education in the least restrictive environment.

The court required each local school district to identify all such children and youth beyond the school age of 21 if necessary and provide them an opportunity for an appropriate education. For older members of the class, a choice was made available of academic assistance or a combined Graduate Equivalency Diploma/vocational education program. Children under the age of 15 were awarded tutoring and other services to assist them in remediating deficits and receiving a diploma.

In *NCARC*, in addition to assuring a right to appropriate services for students currently protected by statutory school-age provisions, the court required the state to "submit . . . each year . . . a written plan to provide adequate compensatory educational services at state expense in organized training facilities, such as, but not limited to, sheltered workshops and Adult Day Activity Programs (ADAP), to all retarded citizens in North Carolina whose ages at the time of submission of the plan exceed seventeen" p. 6). The plan must include identification of student and student characteristics; training facilities and personnel needs; cost information; and public awareness activities.

The trend toward compensatory educational services had been reflected in state legislation as well as in right-to-education litigation. Some states, independent of court action or mandate, have begun to develop policies which grant educational services to certain handicapped individuals to compensate for earlier exclusion. Maryland's Chapter 835 §8-401.1(A) stipulates that "a handicapped individual shall receive up to two years compensatory special educational services for as many years as the individual was a resident of Maryland and was unable to attend school or was unable to receive appropriate educational services in any year after 1975 and the individual: (1) is between 19 through 20 years old during fiscal year 1980. . . ." Further, the criteria for eligibility includes any person who was unable to receive services because of either the unavailability of services, the nonimplementation of local plans or the individualized education program (IEP), dismissal for reasons related to the handicap, or inability to attend for 180 consecutive days because of health-related reasons. The statute provides that compensatory services shall not be terminated solely because the individual reaches the age of 21.

Such statutory amendments exemplify the awareness of issues which are often the result of litigation. It was first through litigation and subsequent court action that the right to compensatory special education was granted; it is now reflected in voluntary state policy revisions.

Suspension and Expulsion

One of the new areas in which the right to education is being defined by the courts is the exclusion of handicapped students from school by the disciplinary actions of suspension and expulsion. There are actually three questions which the courts have addressed in regard to suspensions or expulsions in view of existing federal and state mandates:

1. Whether suspension and expulsion constitute a denial of the student's right to education.
2. Whether such actions constitute a change in placement under P. L. 94-142 and Section 504, and thus are subject to the procedural safeguards for such under federal policy, including IEP revisions, due process, and least restrictive provisions.
3. Whether an alternative education program needs to be provided during the period of exclusion.

Right to Education

Inherent in the right to education is the presumption of the importance of education. Courts have affirmed that loss of education presents a serious harm to a child, with long-term consequences. According to the court in *Brown* v. *Board of Education* (1954), "Education is perhaps the most important function of state and local governments."

S-1 v. *Turlington* (1981) was filed after the Hendry County School Board expelled seven educable mentally retarded pupils in 1977 and 1978 for misconduct. However, the court ruled that the expulsion violated the procedural safeguards of P. L. 94-142 and Section 504. The court mandated that the two laws required that schools must determine if the misconduct is handicap-related and, if so, any disciplinary action that would result in a change in placement, e.g., expulsion, must be conducted under the review procedures of P. L. 94-142. Reluctance on the part of state officials to intervene in an area traditionally reserved as local prerogative, such as disciplinary policies, was soundly condemned in *S-1*. The court of appeals upheld the district court decision that the state of Florida failed in its duty to oversee implementation of the EHA. The court found that the state had abdicated its responsibility for the education of handicapped children. In answer to the state's assertion that it did "not have the authority to intervene in expulsion proceedings," the court asserted that the contrary was true. "Because these types of proceedings may serve to deny an education to those entitled to it under EHA, the state is clearly empowered under USC 1412(6) to act" (EHLR, 55: 272). The Supreme Court refused to review the appeals court decision, thus allowing the lower court's opinion to stand.

Procedural Safeguards

The year 1975 saw two important Supreme Court decisions in the area of civil rights in school discipline. In *Goss* v. *Lopez* (1975), the Court ruled that students facing temporary suspensions of up to 10 days must be given oral or written notice of charges against them and the opportunity to deny the charges. In *Wood* v. *Strickland* (1975), the Supreme Court ruled that parents and students could sue school officials for monetary damages in disciplinary disputes.

Following these cases, courts in *Stuart* v. *Nappi* (1978), *Doe* v. *Koger* (1979), *Kenneth J.* v. *Kline* (1977), and *S-1* v. *Turlington* (1981) concluded that expulsions should be considered a change in placement within the definition of the EHA and thus be subject to procedural safeguards. This is significant for handicapped students whose misbehavior may be related to their handicap. Yet, regardless of whether such a claim could be made, such holdings affirm that decisions about the link between behavior and handicap must be made by those who are familiar with the child and are qualified to do so.

In *Kenneth J.* v. *Kline* (1977), the plaintiff was expelled because he was emotionally disturbed. State regulations at the time only protected mentally retarded children from expulsion. According to Pa. Reg. §13.62(a), "the suspension of a mentally retarded child under the same circumstances as a typical child might amount to punishment for a ramification of the very disability which a public school education is seeking to remedy." The court held that emotionally disturbed and learning disabled students were to receive protection from expulsion similar to those afforded the retarded. Further, it asserted that school boards could not determine whether a child's misbehavior was a result of a handicap; rather, that determination must be made by those persons qualified to evaluate

the student's special needs and develop his or her individualized education program.

With respect to due process, the guiding principle was set down in *Mullane* v. *Central Hanover* (1950), in which the court stated that the Fourteenth Amendment requires that deprivation of life, liberty or property by adjudication be preceded by notice and opportunity for hearing appropriate to the nature of the case.

Goss v. *Lopez* went further to deal with the question of what process should be accorded once it is established that due process applies. In *Goss*, the Supreme Court ruled that a student has a constitutional right to at least an informal meeting with an administrator before any suspension, even a short one. They must be given oral or written notice of the charges against them and an opportunity to deny the charges. However, for suspensions of more than 10 days, formal hearing procedures, perhaps with representation by counsel, may be required.

In *Stuart* v. *Nappi*, the U.S. District Court ruled that the Education of the Handicapped Act established procedures which replaced expulsion. Yet, in *Southeast Warren Community School District* v. *Department of Public Instruction* (1979), the court of appeals affirmed the lower court decision that special education students could be expelled from school. In doing so, however, schools "must accord full recognition of their status. The proceeding must be conducted under special procedures which assure, in accordance with statute, that the child's needs and alternative placements are fully evaluated and considered before the decision on expulsion is made" (EHLR, 551:382). Thus, regular expulsion procedures were found inappropriate for special education students because of the EHA protections. Despite this decision, it is difficult to imagine its implementation. The *Warren* district court stated that "expulsion should be resorted to only when no reasonable alternative placement is available" (EHLR, 551:382), a circumstance which would seem to violate the Education of the Handicapped Act. Thus, through these and other cases, the following provisions seem to be required in disciplinary circumstances involving the handicapped, except in emergency situations where the child or others are endangered:

- A written notice to parents which meets the requirements of the EHA.
- An individualized education program reviewed and revised where appropriate by a school-parent team.
- The right of parents or school to initiate a due process hearing if they disagree about the proposed expulsion.
- Continued placement in the student's current educational program pending the outcome of such a hearing, unless both the school and the parents agree otherwise.

Although some complainants have asserted that the misbehavior was caused by an inappropriate education program (e.g., *Stuart* v. *Nappi*), no court has relied on such a connection in expulsion cases,* nor upon the connection between the handicap and the behavior. Regardless, however, expulsion has been found to be a change of placement and subject to procedural safeguards.

Alternative Programs

If disciplinary exclusion from school constitutes a denial of the right to education and is subject to procedural safeguards, the next question for courts to address is whether an alternative education program needs to be provided during the period of exclusion. The court in *Mrs. A. J.* v. *Special School District No. 1* (1979) ruled that such an alternative was required. However, this decision was based on a state law (Minnesota's Pupil Fair Dismissal Act, §127.26-127.39) rather than on a federal law. The court ruled that supervised homework satisfied the requirements of the state's statute. The issue of alternative programs during suspension may well arise in future disciplinary litigation for the handicapped.

In *Stuart* v. *Nappi*, it was found that the right of each handicapped child to be educated in the least restrictive appropriate environment is violated by expulsion from public school without providing an appropriate alternative program. Placement decisions for handicapped children who require special education must be made according to EHA procedures. A unilateral decision to expel the student would restrict placement to a private school or home-

*In *Frederick L.* v. *Thomas* (1976), the court recognized a causal relationship between the school's failure to appropriately educate the plaintiff and the frustration he was exhibiting by his behavior. While the same question was raised in *Stuart* v. *Nappi*, its resolution was beyond the scope of the case.

bound tutoring. Thus, the EHA requirement that children be educated in the least restrictive setting means that, even after these procedures have been exhausted, a child who is handicapped cannot be expelled from school unless the resulting private or homebound placement is shown to be the least restrictive environment appropriate.

The consent decree in *Donnie R.* v. *Wood* (1977) spoke to this point by specifying that, concomitant to disciplinary proceedings following an evaluation to determine his needs, the plaintiff be educated in a public school setting with as much contact with nonhandicapped children as was appropriate for him, unless the particular services he needs could not be provided in that setting. To assure fairness, it was directed that the child's parents and community mental health officials who had worked with him over the years participate in the evaluation.

Thus, courts have affirmed that any transfer from the individually prescribed program to a more restrictive (or segregated/separated) environment, such as through disciplinary action, must be done pursuant to the EHA process, i.e., by a professional evaluation team working closely with the child's parents and in conformance with the due process safeguards for making educational placement decisions.

Bilingual Special Education

In another example of how the right-to-education concept is being broadened beyond access to special education, courts are beginning to examine how language barriers effectively deny culturally and/or linguistically diverse handicapped students access to an appropriate education. Procedures for evaluation, placement, and reevaluation have been challenged as discriminatory in several courts (e.g., *Lora* v. *The Board of Education*, 1978; *Jose P.* v. *Ambach*, 1979; *Larry P.* v. *Riles*, 1979). Yet only one significant action resulted in an order for the provision of bilingual special education for handicapped students whose primary language is other than English. This case, *Dyrcia S. et al.* v. *Board of Education of the City of New York* (1980), is a class action suit involving Puerto Rican and Hispanic Students. A brief history of New York's recent litigation in this area will provide a necessary context for understanding this decision.

In *Lora* v. *The Board of Education of the City of New York* (1978) the issue was disproportionate assignment of Black and Hispanic students to special day schools for the emotionally disturbed. A lack of adequate facilities in the public schools resulted in racially and ethnically segregated schools that were more restrictive than appropriate. The district court held that plaintiffs were discriminated against on the basis of race in violation of the Fourteenth Amendment and the Civil Rights Act of 1964. It also held that, on constitutional grounds and according to the EHA and Section 504, the program at the special day school was inadequate and plaintiffs suffered inadequate treatment in referral, evaluation, and due process procedures. The decision in this case is currently being appealed.

Following the *Lora* case, which was initiated in 1975 but which did not result in a final order by the district court until 1979, several other cases were filed in the Eastern District Court of New York which have implications for children of culturally and/or linguistically diverse backgrounds. These cases are *Jose P.* v. *Ambach* (1979), *United Cerebral Palsy of New York* v. *Board of Education* (1980), and *Dyrcia S.* v. *Board of Education* (1980).

Jose P. v. *Ambach*, a class action on behalf of all handicapped children between the ages of 5 and 21 who had been deprived of a free appropriate public education because of the failure of the Board of Education to provide timely evaluation and placement of such children in suitable programs, was filed on February 1, 1979. The complaint in *United Cerebral Palsy* (UCP), a class action on behalf of UCP as an organization and all handicapped individuals residing in New York who are legally entitled to the provision of a free appropriate public education and who have disabilities resulting from brain injury or other impairments to the central nervous system, was filed on March 2, 1979, and raised a broad spectrum of issues involving the failure to provide appropriate special education services to such children. *Dyrcia S.* v. *Board of Education* was brought on October 2, 1979, on behalf of Puerto Rican and other Hispanic children residing in New York City who are handicapped and have limited English proficiency. It was charged that these children require bilingual-bicultural special education programs for which they were not being promptly evaluated and placed.

Extensive negotiations were held under the supervision of the Special Master involving the plaintiffs in *Jose P., UCP,* and *Dyrcia S.,* and the defendants in the three cases, the Board of Education and the State Education Department, as well as Advocates for Children and the Public Education Association acting as *amici.* On December 14, 1979, Judge Nickerson issued a comprehensive order in *Jose P.* This order was based on the recommendations of the Special Master in the case, former federal Judge Marvin E. Frankel, which in turn was based on the Board's own plan for reorganizing special education services and the negotiations among the parties and *amici.* The order is a far-reaching remedial order which affects virtually every aspect of special education in New York City. It encompasses the following:

1. *Identification of children in need of special education services*—An annual census, an outreach office with adequate bilingual resources, and a procedure for reviewing the needs of truants and drop-outs.
2. *Appropriate evaluation*—Establishment of school based support teams (SBST's) in all schools by April of 1981 to evaluate children in most instances in their own school environment and to seek school-based remedies where appropriate; provision of resources by the spring of 1980 for timely evaluation of children either by Board of Education staff or through contracting with approved outside facilities; and provision of bilingual, nondiscriminatory evaluation processes.
3. *Appropriate programs in the least restrictive environment*—Provision of a continuum of services including preventive services, resource room programs in all regular schools, and sufficient programs for all handicapped children with both high-incidence and low-incidence disabilities as close to their homes as possible; and the provision of appropriate bilingual programs at each level of the continuum for children with limited English proficiency.
4. *Due process and parental and student rights*—Commitment to issue a parents' rights booklet (and a Spanish language version) which explains all the due process and confidentiality protections available to parents and students, including appeal rights; provision for participation by parents in all Committee on the Handicapped and School Based Support Team meetings held to discuss their child; provision of extensive outreach efforts, which include hiring neighborhood workers, involving parents in the evaluation and placement process and the development of individualized education programs, and ensuring that cases are not improperly closed and that pupils are not improperly dropped or discharged from special education programs; and procedures for the appointment of surrogate parents for children whose parents are unknown or cannot be located, or who are wards of the court.

On February 27, 1980, a consolidated judgment was issued in the *UCP* and *Dyrcia S.* cases incorporating all provisions of the *Jose P.* order, except for a liability finding. Although the Board of Education did not consent to the *Jose P.* order and the orders in the related cases, it agreed not to appeal. The State Education Department initially filed an appeal on the issue of its responsibility to assure compliance by the city; however, it subsequently withdrew the appeal without prejudice.

Thus, the need to provide bilingual special education for some children was judicially established, though not all handicapped children who require bilingual special education are assured of receiving such services. A promising trend is the inclusion of bilingual goals, objectives, programs, and services in the handicapped student's individualized education program (IEP). While progress is being made, this issue is likely to continue as a focus for public policy change in the years to come.

Nondiscriminatory Evaluation Procedures

Nazzaro (1976) used the analogy of a fishing net to describe the phenomena of evaluating students for purposes of educational planning:

> If one constructs an analogy between fishing and the delivery of special education services, one can see that the net is like the policies which determine who will be identified for special help and how that determination will take place. The size of the mesh can be compared to the adequacy and comprehensiveness of the screening process which identifies children who can best be served through special education programs. Since the screening process acts as a filter it is important that children referred for evaluation are not caught in an

> unnecessarily restrictive placement if their needs can be more appropriately met in a less restrictive setting. The quality of the net is like the eligibility identification procedures, which depend on the integrity and commitment of the professionals responsible for supplying direct services. Each fisherman, in this analogy, is represented by a different group of individuals: parents, educators, psychologists, lawyers, and legislators. (p. 33)

Great strides were made in the 1960's and 1970's in raising the awareness of educators and consumers to the potential hazards of screening and evaluation procedures. Such hazards include "false positives" and "false negatives," i.e., procedures that may, as a result of their construction or use, either falsely identify students as handicapped who in fact are not, or else fail to identify needy students. Of course, the great concern with regard to the former case is not that children may receive services that they do not need, but rather that they might suffer from the label of a handicap and its associated stigma and indeed receive an inadequate, inappropriate education.

Nazzaro (1976) reviewed the landmark cases of the period, including *Hobson* v. *Hansen* (1968) and *Diana* v. *State Board of Education* (1970), which outlined procedures designed to remediate the misclassification dilemma. Developments to make evaluation measures culturally and linguistically appropriate have been attempted in order that children who possess different language and cultural backgrounds are not mistaken as handicapped simply because the test items do not take such differences into account. Corrective measures have been developed, such as the use of multifactored assessments which use more than one measure as the basis for determining a handicapping condition, and the inclusion of minority students in the standardization population in the construction of tests.

Bias in Standardized Testing

One lawsuit mentioned by Nazzaro, *Larry P.* v. *Riles* (1979), in fact remained under the scrutiny of the court until October 1979, when the court issued the most thorough treatment to date of the issues related to the appropriateness of traditional standardized testing procedures for minority students. *Larry P.* was first filed on November 23, 1971. It challenged as unconstitutional, on the basis of racial discrimination, the use of standardized intelligence tests for the placement of Black students in classes for the educable mentally retarded (EMR). The plaintiff class, "all black California school children who have been or may in the future be classified as mentally retarded on the basis of I.Q. tests" (p. 3), alleged that the use of standardized IQ tests for placement in classes for the educable mentally retarded have resulted in misclassification, erroneous placement, and overrepresentation of Blacks, because such tests are racially and culturally biased. Black children, although representing 10% of the total student population, comprised 25% of the enrollment in classes for the educable mentally retarded.

In 1972, the court issued a preliminary injunction restraining the use of IQ tests for such placements "if the consequence of use of such criteria is racial imbalance in the composition of such classes" (p. 5). The defendants, San Francisco and California State Education Agency personnel, appealed, but in 1974 the court of appeals upheld the preliminary injunction. In January of 1975, the California schools voluntarily imposed a moratorium on the use of IQ tests for EMR placement of all children, regardless of race. According to the court, "for a period of time it was thought the Master Plan for special education in California . . . would address and perhaps remedy the problems raised by this case, but that hope never materialized. The case had to be brought to trial" (p. 6). In 1977, an amended complaint was filed. Later in 1977 the U.S. Department of Justice requested to participate as *amicus curiae*, and trial began on October 11, 1977. On October 11, 1979, Robert F. Peckham, Chief Judge, U.S. District Court for the Northern District of California, issued a final ruling in favor of the plaintiffs in the 8-year-old case.

The court held that the defendants had violated both state and federal statutes and constitutions:

- Regarding federal statutory law (Section 504 of the Rehabilitation Act of 1973, Part B of The Education of the Handicapped Act [P. L. 94-142], and Title VI of the Civil Rights Act of 1964), schools were found to have: (a) "utilized I.Q. tests that are racially and culturally biased, have a discriminatory impact on black children, and have not been validated for the

placement of black children into EMR classes; and (b) generally allowed the placement of black children in grossly disproportionate numbers into EMR classes by procedures that have not been validated" (p. 101).

- Regarding state and federal constitutional rights to equal protection, it was found that defendants tolerated and intentionally fostered overenrollment of Black children in classes for the educable mentally retarded, thus meeting the necessary constitutional tests of both "effect" and "intent" to discriminate.

Judge Peckham considered the difficulties involved in court intervention into educational practice:

> Courts cannot solve our educational problems. . . . The court has necessarily been drawn into the emotionally charged debate about the nature of "intelligence" and its basis in "genes" or the "environment." This debate, which finds renowned experts disagreeing sharply, obviously cannot be resolved by judicial decree. Despite these problems, however, court intervention has been necessary. The history of this litigation has demonstrated the failure of legislators and administrative agencies to confront problems that clearly had to be faced, and it has revealed an all too typical willingness either to do nothing or to pass on issues to the courts. (p. 2)

In reaching his decision, Judge Peckham reviewed both the legal and professional history of standardized testing, including the development and use of IQ tests in special education placement and studies of their impact on minority populations. Judge Peckham came to the following conclusions:

- Many of the early leaders of the testing movement held the assumption that subnormal intelligence was differentially distributed among certain racial and ethnic groups, leading to the establishment of the overrepresentation of minority groups in special classes.
- The curriculum of these special classes was not designed to help students return to the regular class and was inferior, resulting in the children falling further behind.
- Further, decision makers, though aware of the overrepresentation of minority groups in special classes, failed to gather data to support the validity of the tests used to place these children.
- Finally, actions and omissions by the state "revealed a complacent acceptance" of discriminatory practices. As such, they met the necessary judicial test of having both the "effect" and "intent" to discriminate and therefore violated the equal protection clause of the U.S. Constitution as well as EHA and Section 504.

In response to plaintiffs' claims under EHA and Section 504, defendants asserted (a) that there is no private right of action and (b) that plaintiffs must exhaust administrative remedies prior to filing suit. The court dismissed both arguments by citing legislative history of the statutes as well as other judicial precedents establishing a private right of action under both EHA and Section 504 and finding an exhaustion requirement to be "meaningless and superfluous" and without purpose in a class action based on multiple statutory and constitutional claims and charging systemwide testing and placement bias.

Alternative Placement Criteria

Since the beginning of the state's moratorium on IQ testing for EMR placement, alternative placement criteria have been used. According to several expert witnesses, these alternatives have "worked reasonably well" and adequate placement decisions have been made without the use of IQ tests. According to the opinion, "many schools are taking more time and care with their assessments . . . relying more on observational data gathered both in and out of the classroom . . . and evidence suggests that the results are less discriminatory" (p. 73). Assessment data include a child's personal history and development, adaptive behavior in and out of school, classroom performance, and academic achievement.

The remedies of the court were "confined to the facts and issues" of the particular case:

- *Testing*—Defendants were permanently enjoined from using standardized IQ tests for the identification of Black children for placement into classes for the educable mentally retarded without prior approval of the court. The procedures for acquiring the approval are detailed in the order and relate to supplying data pertaining to the validity of the proposed test for both Blacks and Whites.

- *Placement*—Defendants were ordered to monitor and adopt procedures to correct the racial imbalance of classes for the educable mentally retarded.
- *Reevaluation*—All Black children currently enrolled in classes for the educable mentally retarded must receive reevaluations without the use of IQ tests.

Judge Peckham pointed out that the remedies would not pose an undue hardship, since they were similar to those voluntarily adopted earlier by the state for the placement of Hispanic children. Finally, he concluded his opinion with the following:

> It may be that E.M.R. classes and the philosophy underlying them are educational anachronisms. They focus on a label—retardation—derived for the most part from arbitrary cut-off scores on standardized I.Q. tests, and that label is used to justify academic isolation in special dead-end classes.
>
> A contrary educational philosophy has been gaining adherents. The state's Master Plan, still not fully implemented, embodies many of the concerns of this philosophy, and it underlies recent federal statutory reforms concerning the education of the handicapped. This philosophy aims not at labeling a child and confining the "retarded" in special classes. Rather, it aims to diagnose learning problems, to take the child as he or she is, and to encourage remedial action through an individualized educational program. The idea is also to keep children whenever possible in regular classes with nonhandicapped children.
>
> This philosophy may not eliminate special education, but it certainly contemplates a lesser role for classes such as those for the E.M.R. Despite the potential of the Master Plan, those classes still do exist in California, forcing this court to act to protect the rights of black children assigned to them, but such classes are clearly not as important as they once were. Enrollments are now much less than one-half of what they were a decade ago. Change is taking place. The movement is away from labeling and isolation and toward education to meet individual needs. The future of special education may be a brighter one. Whatever the future, however, it is essential that California's educators confront the problem of the widespread failure to provide an adequate education to underprivileged minorities such as the black children who brought this lawsuit. Educators have too often been able to rationalize inaction by blaming educational failure on an assumed intellectual inferiority of disproportionate numbers of black children. That assumption without validation is unacceptable, and it is made all the more invidious when "legitimated" by ostensibly neutral, scientific I.Q. scores. We have refused to allow the continuation of E.M.R. policies consistent only with that assumption, and it is hoped this will clear the way for more constructive educational reform. (p. 109)

Larry P. is currently on appeal to the 9th U.S. Circuit Court of Appeals.

The Controversy Continues

In *Larry P.*, the issues involved in alleged test discrimination were thoroughly treated; the court found in favor of the plaintiffs and thus ruled that IQ tests could not be used for EMR placement decisions for Black children. In a more recent decision, *Parents in Action on Special Education (PASE)* v. *Hannon, et al.* (1980), the IQ test items themselves were examined for discriminatory factors. The court found them not to be discriminatory and thus ruled that Chicago schools may continue their use in conjunction with "other criteria" for decision making.

In his concluding remarks, Judge Grady compared his analysis to that of Judge Peckham's in *Larry P.* by stating that he differs in his judgment because Peckham's "lengthy and scholarly opinion is largely devoted to the question of what legal consequences flow from a finding of racial bias in the tests" (EHLR, 1980, p. 552:140). Further, Grady pointed out that there was, in fact, little analysis of tests themselves and that:

> As is now obvious, the witnesses and the arguments which persuaded Judge Peckham have not persuaded me. Moreover, I believe the issue in the case cannot properly be analyzed without a detailed examination of the items on the tests. It is clear that this was not undertaken in the *Larry P.* case. (p. 552:140)

Judge Grady summarized his findings that one item on the Stanford-Binet and eight items on the WISC and WISC-R are culturally biased against Black children. However, Judge Grady determined that "these few items do not render the tests unfair and would not significantly affect the score of an individual taking the test" (p. 552:140). The use of such evaluation procedures was found to be acceptable when administered by qualified personnel and when used in conjunction with other criteria, which is, as noted by the court, required under EHA. While ruling that the tests are not inherently discriminatory with regard to the issue of misassessment and the disproportionate numbers of minority children in EMR classes, Judge Grady ruled that "there is no evidence in this record that such misassessments as do occur are the results of racial bias in test items or in any other aspect of the assessment process currently in use in the Chicago public school system" (p. 552:140). The court's treatment of the relationship between the tests and the disproportionate numbers of Black children in EMR classes is summarized in the following excerpt:

> Plaintiffs argue that the racial bias of the IQ test is shown circumstantially by the fact that blacks, although possessing the same innate mental ability as whites, do not score as well as whites on the tests. Plaintiffs say this of itself shows the tests must be measuring the amount of culture-specific information acquired by whites and not by blacks. There is no dispute in this case about the equality of innate intellectual capacity. Defendants assert no less strongly than plaintiffs that there are no genetic differences in mental capacity. However, the rest of plaintiff's argument sidesteps their inability to point to any actual racial bias in the test items. All but a few of the items on their face appear racially neutral. It is not valid to draw an inference of unfairness if that can be done only by ignoring direct evidence of fairness. A preferable analysis would seek to account for all the data.
>
> The IQ tests do not purport to measure innate intelligence. The test authors expressly disavow any such purpose. Both sides agree that no test has been or probably can be devised which will do that. What the tests appear to measure is the extent to which one utilizes his innate abilities in the performance of certain general categories of learned intellectual tasks. Performance on the tests reflects, for instance, the extent to which one has learned to observe, to see similarities and differences, to notice causal relationships, to remember, to draw inferences, to generalize, and to concentrate. The tests also indicate how well one has used those abilities to acquire certain specific knowledge, such as language and arithmetical concepts.
>
> The acquisition and development of these mental skills is, according to defendant's witnesses..., greatly affected by the child's early experiences. Early intellectual stimulation is essential. If the child does not receive it, or if he receives it to an insufficient degree, his intellectual development—his ability to use his innate capacity to deal with intellectual problems—will be delayed. Lack of opportunity for cognitive stimulation is, according to these witnesses and some of the literature received in evidence, often due to factors associated with economic poverty in the home. Defendants offered a collection of census data (Def. Ex. 8(A)) documenting the fact that poverty and reduced socio-economic status is far more often a condition of black families than of white families in Chicago. According to Dr. Zimmerman, the areas from which most of the children in EMH classes in Chicago are drawn are the poverty pockets of the inner city. A high percentage of the population of these areas is black. Dr. Zimmerman explained how the Headstart program, a massively funded Federal program designed to enhance the intellectual functioning of pre-school children in preparation for the school experience, operates on the premise that children in poverty areas are often deprived of adequate cognitive stimulation in the home environment. Plaintiffs totally reject this suggestion that the performance of black children on IQ tests can be explained by deficiencies in their cognitive environment. Dr. Williams and Dr. Gloria Powell, the Director of Child Psychiatry in the Neuropsychiatric Institute at the UCLA School of Medicine, strongly contended that the mental stimulation received by poor black children in the inner city is adequate and in all respects equal to the intellectual stimulation received by middle class white

children. They emphasized the richness of black culture and denied that any socio-economic disadvantages can explain the difference between black and white IQ scores. Dr. Powell's explanation for the disproportionate placement of black children in EMH classes is the "failure of the school to adequately assess the intellectual function of children who are culturally different." This failure, in the view of Drs. Powell and Williams, is caused by the use of the culturally biased IQ tests.

Dr. Powell's explanation does not satisfy me. She had no explanation for the presence of the Headstart program in the inner city and did not answer a question specifically directed to her about it. She seemed ill-prepared to discuss the question of cognitive stimulation. Most of her testimony was directed to whether health factors in the prenatal and postnatal environment, such as malnutrition and disease, can affect the intellectual functioning of the child. She strongly contends they do not. While defendants have submitted published material supporting the position that such physical health factors do play a significant role in mental development, I would be satisfied to rely upon the studies cited by Dr. Powell. But as to whether factors associated with poverty in the home often inhibit an environment that will stimulate cognitive functioning in the child, I believe the defendants have presented the more persuasive argument.

Defendants' explanation of the IQ difference, that it is caused by socio-economic factors which interfere with the development of intellectual skills, is consistent with other circumstances not accounted for by plaintiff's theory of cultural bias. It is uncontradicted that most of the children in the EMH classes do in fact come from the poverty pockets of the city. This tends to suggest that what is involved is not simply race but something associated with poverty. It is also significant that many black children who take the tests score at levels high enough to preclude EMH placement. Plaintiffs have not explained why the alleged cultural bias of the tests did not result in EMH level scores for these children. Plaintiffs' theory of cultural bias simply ignores the fact that black children perform differently from each other on the tests. It also fails to explain the fact that some black children perform better than most whites. Nationally, 15 to 20% of the blacks who take the tests score above the white mean of 100. (p. 552:136-7)

Thus, while it was hoped that the question of racial and cultural bias in testing would be resolved by the long-awaited *Larry P.* decision, the *PASE* decision clearly demonstrates the continuing controversial nature of the testing issue. These decisions also exemplify the difficulty encountered by the courts when asked to render judgments in areas where there is considerable discrepancy and lack of consensus by professionals. Courts have been reluctant to enter judgment where the issue appears to be one of professional standards rather than legality. However, the lack of consensus among educators and the failure of education systems to meet the research and information demands necessary to resolve these complex issues have resulted in an attempt by the courts to intervene in what are essentially professional concerns.

Extended School Year

Under the EHA, appropriate education must be designed to meet the individual needs of the student. The courts are increasingly finding themselves in the position of policy maker with regard to the practical definition of "appropriate." At issue is whether appropriate education is simply equal access to the same services as offered to nonhandicapped students or whether it is equal opportunity to benefit from an education. Repeatedly, the courts have favored the latter interpretation. In essence, equal opportunity to become educated requires that different services be provided for different students based on individual needs. This rationale has been applied by the courts in the issue of requiring schooling beyond the normal school year for those children who experience "serious regression" over summer breaks and whose ability to recoup lost skills after such a break is seriously limited.

The Third Circuit Court of Appeals settled the first such case by ruling that Pennsylvania's policy of restricting all education programs to the regular school term of 180 school days violates federal law. The case, *Battle, Bernard, and Armstrong* v. *Kline, et al.* (1980) (formerly *Armstrong* v. *Kline*), was brought on behalf of three

severely handicapped students. It was alleged that the state policy precluded individual treatment for some handicapped students whose appropriate education might require programming beyond the regular school term. The plaintiffs argued that such a systemwide policy violated the provisions of The Education of the Handicapped Act, which assures special education and related services that are individualized to meet the unique needs of the handicapped student.

In the complex order filed on July 15, 1980, the three-judge panel filed three separate opinions: a majority opinion, one concurring with the majority but with restrictions on applicability, and one concurring with partial dissent. Two opinions disagreed with the lower court's ruling that the 180-day policy violated P. L. 94-142 on both the substantive and procedural levels. The lower court held that Congress intended an appropriate education to mean an education that is likely to enhance self-sufficiency. This substantive definition requires individual program considerations, including length of programming, and is protected by procedural safeguards. Two of the appellate judges agreed that the EHA was procedurally violated by the inflexible 180-day policy, i.e., such a policy does not meet the IEP and procedural due process requirements for individual decision making, but disagreed with regard to the substantive meaning of "appropriate" as referring to programming that is to enhance self-sufficiency. Judge Hunter stated:

> The core of this case is the conflict between the 180 day rule and the statutory mandate of "free appropriate public education." The district court concluded that the Act provides a special educational goal for members of the plaintiff class. We believe that by focusing on the Act as providing a particular educational goal, the district court erred. Rather, the Act contemplates that in the first instance each state shall have the responsibility of setting individual educational goals and reasonable means to attain those goals. The Act, however, imposes strict procedural requirements to insure the proper formulation of a free appropriate public education. We conclude that the 180 day rule precludes the proper determination of the content of a free appropriate public education and, accordingly, that it violates the Act. (*Battle, Bernard and Armstrong* v. Kline, 1980, p. 17)

One concurring opinion focused on definition of the population and raised the specter of limitations due to financial resources for providing an appropriate education. Judge Van Dusen agreed with Judge Hunter that the issue of "appropriate" services is determined by the procedural requirements, i.e., individual planning and treatment, rather than inferring an "educational goal." However, in Judge Van Dusen's opinion, the decision to rule against the 180-day school policy as violative of P. L. 94-142 procedural safeguards carries with it a limited scope. He stated "that the Act, while placing numerous requirements on recipients of federal funds, makes accommodation for legitimate financial concerns of the state" (p. 28). In addition, Judge Van Dusen would narrow the size of the class of students who may require an extended school year from "all handicapped school age persons in the Commonwealth of Pennsylvania who require or may require a program of special education and related services in excess of 180 days per year" to "those school age individuals who are severely emotionally disturbed or severely and profoundly impaired and whose regression-recoupment syndrome is so severe that the traditional summer vacation period occasioned by the 180-day policy brings their overall progress for the year to a virtual standstill" (p. 30).

Finally, the "concurring with dissent" opinion issued by Judge Sloviter agreed with the finding that the 180-day rule violated P. L. 94-142, but dissented by reverting back to the lower court's substantive reasoning in defining the concept of what constitutes "appropriate."

> It [the court] appears to reach this conclusion on the basis that the Pennsylvania rule violates the procedural requirements which the Act imposes, because the rule applies across the board without regard to the individual child. I agree with the majority in this conclusion. However, the majority declines to affirm the district court judgment in its entirety because "the district court was premature in attempting to formulate educational policy from the legislative history in the face of the Act's deference to state educational decision making." I respectfully dissent from this portion of the majority's decision because I believe that elucidation of the principal goal of the statute is essential to any interpretation of its provisions, whether they are substantive or procedural. (p. 33)

The three-judge panel in *Battle*, by issuing three separate opinions, reflected the complexity of the issue facing the courts. It is not simply a question of whether an inflexible 180-day school year policy violates federal statutes, but in what *manner*. The judicial disagreement surrounding the Congressional intent and meaning of the term "appropriate" as it is used in the EHA symbolizes similar difficulties other jurists and policy makers have encountered. The Supreme Court refused to review *Battle*, thus letting the lower court's opinion stand.

Other cases with similar allegations by plaintiffs have been filed in various states, e.g., *Chapman* v. *Amphitheater School District* (1980) in Arizona, and *Georgia Association for Retarded Citizens (GARC)* v. *Dr. Charles McDaniel* (1979). The United States Department of Justice filed an *amicus* brief in *GARC*, clearly establishing the federal position that a policy of restricting the school year to a set time period without regard to individual student needs is in conflict with Congressional intent under the EHA and Section 504. As in several other issues raised in this article, many states and localities are reviewing their extended school year policies in light of these court directives. Questions of eligibility criteria for extended programming and availability of adequate resources remain unresolved in the states of these lawsuits, as well as in states which have independently proceeded to evaluate their school term policies. The *Armstrong* court offered standards for making eligibility decisions which included factors such as individual needs, nature of handicapping condition, severity of handicapping condition, areas of learning affected, capacity of parent or guardian to monitor programming and prevent regression, and extent of regression or recoupment.

Other Issues

While the judicial system has increasingly reaffirmed or refined the rights of handicapped individuals to appropriate educational services and procedures, there are areas that have been brought before the court for scrutiny, but for which there has yet to be decisive action. These include procedural and substantive issues in delivering appropriate education and related services to confined or incarcerated handicapped youth, the enforcement of the surrogate parent provision of the EHA for eligible students, and the establishment of whether similar rights and protections are to be extended to gifted and talented children and youth.

Corrections

Past litigation has established the right to receive treatment for persons institutionalized in mental health/retardation facilities, but more recently advocates have alleged that handicapped youth incarcerated in juvenile corrections facilities or who are detained or held in child welfare agencies also have a right to treatment. A central treatment issue which is emerging for handicapped youth in these various situations includes the right to an appropriate education as designed and required by the EHA and Section 504.

Doe v. *Bradley* (1979) (formerly *Doe* v. *Henderson*), a case filed against the State Corrections Agency in Tennessee, is the first class action right-to-treatment suit that asserts that mentally retarded children and youth incarcerated in youth corrections facilities have a constitutional right to treatment, including a right to an appropriate education as defined by the EHA and state statute. Plaintiffs request special education and related services required to meet their individual needs as well as the development of policies and procedures to assure such services as needed in the future. Plaintiffs allege that the Department of Corrections is an eligible "school district" within the definition of Tennessee law and thus is eligible for EHA funds from the Department of Education to provide such services. In not obtaining such funds, the Department of Corrections has failed to fulfill its obligations as a local school district. The plaintiffs also assert that, regardless of the question of custody, the State Department of Education has overall responsibility to provide these services, or to cause them to be provided by the local school district, and has failed to fulfill this statutory duty.

The plaintiff class has advanced arguments of discrimination under Section 504 which prohibits any program receiving federal financial assistance from discriminating against any handicapped individual solely by reason of the handicap. They also assert that their confinement is in violation of the due process clause of Article 1, Section 8, of the Tennessee Constitution, the Fourteenth and Eighth Amendments of the U.S. Constitution, and the clause

which prohibits cruel and unusual punishment of the Eighth Amendment, and that the acts and omissions of the defendants are violative of their rights as a class under the Civil Rights Law of 1871 (42 U.S.C. §1983).

A similar class action suit was filed in 1979 in North Carolina requesting appropriate treatment for "children under the age of eighteen who . . . suffer from serious emotional, mental or neurological handicaps . . . accompanied by behavior which is characterized as violent or assaultive . . . ." The suit, *Willie M., et al.*, v. *James B. Hunt, et al.* (1979), alleged that current placement alternatives—state mental or correctional institutions—are inadequate; that by not providing appropriate treatment such commitments amount to cruel and unusual punishment; and that they therefore violate the U.S. Constitution, the EHA, Section 504, and state statutes. The court action was prompted by a news conference held by a county chief district court judge, in which it was stated that such youths had nowhere to go for adequate treatment and care. The state consented to the facts and the need for appropriate services, and the court currently has ordered the parties to present a plan for the development and implementation of a model program of services, as well as to identify all youth who are members of the class.

Surrogates

A procedural safeguard afforded under P. L. 94-142 is that of educational surrogate parents for students who are without parental protection in special education decision making.

A class action suit has been filed in the state of Connecticut requesting, under authority of the Fifth and Fourteenth Amendments to the U.S. Constitution, the EHA, and Section 504, that the surrogate parent provisions of the EHA be implemented. The class in *Tina A.* v. *Shedd* (1980), consists of "all persons in Connecticut aged 3 through 21 who are wards of the state or whose parents or guardians are unknown or are unavailable and are or may be in need of special education . . . and who have not had surrogate parents . . . appointed to protect their rights." The relief sought is that the state education agency meet the requirement of the EHA by ensuring that a surrogate parent be appointed for such students to carry out the parent participation requirements of the Act, such as access to records, participation in placement decisions, and access to grievance procedures. In addition, the plaintiffs allege that the Connecticut statute pertaining to appointment of surrogate parents is in conflict with federal requirements in that it "provides the Commissioner with discretion in determining whether to seek the appointment of a surrogate parent for a child who meets the EHA eligibility standards."

Gifted and Talented

A suit was filed in 1979 on behalf of a 10-year-old Illinois boy seeking relief from the school district and state, citing that the lack of a gifted program had resulted in a denial of protections found in the Illinois Constitution and school code providing for the optimal educational development of all persons. The complaint, filed by the defendant's father, a lawyer, alleged that the schools "willfully and wantonly failed to promulgate a curriculum designed to meet the special needs of the Gifted Child."

The suit, *Thomas Irwin* v. *School Directors of McHenry Community Consolidated School District No. 15, et al.* (1980), was filed after the district retracted a plan to provide high school Spanish instruction to the boy. The parents argued that they had tried for years to obtain special services for their son, who had been identified as gifted. According to reports, the school board's recission of the Spanish program came about as a result of a fiscal deficit. However, since the initiation of the suit, the service was maintained. The relief sought in the suit included the provision of curriculum designed to meet the special needs of Irwin, to hire qualified faculty, and one million dollars in damages for "irreparable and continuing harm," alleging that the failure to provide appropriate services has resulted in behavioral and emotional disorders in the plaintiff. The court ruled in 1980 that there was no cause of action, since the Illinois education policies do not extend to the gifted. The plaintiff did not appeal.

On March 26, 1979, the Commonwealth Court of Pennsylvania ruled in another case regarding gifted education. In *Central York School District* v. *Commonwealth of Pennsylvania Department of Education* (1977), the local school district appealed an order of the Commonwealth's Secretary of Education requiring the school district to provide a special education

program for a gifted student. The district, not disputing the fact that the student was gifted, alleged that its duties to provide gifted programs were contingent upon the state's obligation to reimburse the district for those costs and that the district understood that reimbursement was not forthcoming. The court upheld the order of the Secretary, stating that reimbursement is not "a condition precedent to the duty of school districts to provide special education for exceptional students required by [state code]. To the contrary, we believe that the School Districts' duty set forth in state code to establish an educational program for the gifted is mandatory and a condition to its right to receive reimbursement from the Commonwealth." (p. 167)

Conclusion

The 1970's saw the affirmation of a legal basis for educational and treatment rights for many handicapped individuals and groups. The issues raised in this chapter represent areas of clarification most often requiring an analysis and judgment by the judicial system. Some of these questions may be regarded as judicial issues for the future that will continue to require the judgment of all education policy makers, including the courts. The courts will continue to play a major role in assisting policy makers, educators, and other professionals and consumers and advocates in interpreting how best to deliver these long-awaited services. Courts will be necessarily called upon to weigh and balance the various interests of the state and the individual.

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Appendix A

The Federal Program Presence Accompanying P.L. 94-142

JOSEPHINE BARRESI
BRUCE A. RAMIREZ

In this Appendix the reader is offered a concise description of the other programs authorized under the federal Education of the Handicapped Act (EHA), Parts B through F, which appear in the federal budget as discrete line items. (Part A of the Act includes general provisions such as the definition of handicapped children for purposes of the entire Act.) The major program of the Act, P. L. 94-142, is in fact an amendment to Part B of the older Education of the Handicapped Act. The reader is also referred to Chapter 2 for a discussion of the origins of EHA.

It should be noted that, beyond the programs briefly reviewed here, "set-asides" for handicapped children (again, discussed in Chapter 2) exist in other federal programs. Examples of these set-asides would include the 10% set-aside of funds for handicapped youth in the federal Vocational Education Act as amended in 1976 (P. L. 94-482), and the special entitlement for handicapped children in state-operated and supported facilities contained within Title I of the newly enacted Education Consolidation and Improvement Act (P. L. 97-35) (commonly known as the "89-313 program" after its original public law designation as part of the Elementary and Secondary Education Act of 1965). Handicapped children may also participate in other federal educational programs in which they are not necessarily specifically designated as recipients. Title II of the Education Consolidation and Improvement Act of 1981 (Subtitle D, Elementary and Secondary Education Block Grant, of Title V of P. L. 97-35) serves as a recent example. The actual allocation of funds across a broad range of programmatic objectives for Title II of this Act will be almost wholly a state and local prerogative; however, specialized services for handicapped students would appear to be an allowable use of these funds.

Eleven federal programs are discussed in this appendix. In each case the reader is provided the title and citation for the program as it appears in EHA and in the Education Title of the United States Code. Also included are summaries of the program's purpose, those eligible to receive funds, the kinds of activities supported, and the funding history of each program following their reauthorization in 1977.

Because of the manner in which federal statutes are enacted and amended over the years, the nature, appropriations and expiration of these programs may deserve some further explanation.

- First, the preschool incentive grants and special studies programs were permanently authorized along with P. L. 94-142 under Part B of EHA, thus, the programs in Part B have no expiration date. Programs in Parts C through F must, however, be reauthorized periodically. Parts C through F were reautho-

rized for a five year period in 1977 and the Omnibus Budget Reconciliation Act of 1981 (P. L. 97-12) extended authorization through 1984.

- Second, through P. L. 97-12 the Congress also significantly reduced the amount of money which could be appropriated for these programs as well as for P. L. 94-142. Readers will observe the lowered authorization amounts for FY 1982 and 1983 in the charts on the following pages. In most instances, authorization ceilings were reduced to approximate FY 1980 appropriation levels. In addition to decreased ceilings, many programs experienced large reductions in actual funding.
- A final distinction is that 10 of the 11 programs are known as "discretionary" programs. Once funds are appropriated by the Congress, the Secretary of Education is given some authority or discretion as to how these funds are spent, provided, of course, that the purposes of the authorizing legislation are upheld. The exception is the preschool incentive grant program. The Secretary has no discretionary power over the use of these funds since they are allocated to states on a formula basis, subject to approval of a state plan, as established by law.

All of the programs cited in this appendix are administered through the U.S. Department of Education, Office of Special Education and Rehabilitative Services (OSERS), Special Education Programs (formerly the Bureau for Education of the Handicapped and more recently the Office of Special Education). The reader is advised that the program data contained in this Appendix (such as approximate number of children served and the number of projects supported) does not extend beyond calendar year 1981.

Regional Vocational, Adult and Postsecondary Programs

Authorizing Provision: Education of the Handicapped Act, Part C, Section 625; (20 USC 1424a).
Purpose: To enable handicapped individuals to continue their formal education beyond high school and to widen the choices of academic preparation available to them. This program supports the development and operation of specially designed or modified programs of vocational-technical, postsecondary, or adult education for deaf and other handicapped persons. The intent is to enable institutions serving predominately nonhandicapped school populations to accommodate the handicapped so they may compete academically in the regular educational program.
Who Receives Funding: Contracts and grants are awarded to institutions of higher education, including junior and community colleges, vocational and technical institutions, and other appropriate nonprofit educational agencies. Since 1975, as specified by Congress, support has also been given to programs for the deaf in regional postsecondary schools in Washington, California, Minnesota, and Louisiana.
Kinds of Activities Supported: This is the only federal program which has as its primary focus assisting the adult handicapped person to overcome the considerable institutional barriers to obtaining a higher education. Vocational rehabilitation services, due to their particular focus, are generally limited to technical-vocational pursuits, rather than being open to the full range of postsecondary educational options that exist, such as education in the sciences or liberal arts. Because of improved programs at the elementary and secondary levels and increased consumer as well as institutional awareness, the number of handicapped students seeking to continue their formal education in integrated postsecondary settings has increased. Examples of activities supported through this program include: direct services to hearing impaired students at regional postsecondary schools; an information services center on the postsecondary education of the handicapped; and demonstration projects in areas such as counseling support during preadmission and orientations, mobility instruction for new blind students, adaptation of laboratory courses, accessible housing location assistance, attendant care and assistance with feeding, interpreters and adaptive transportation assistance.
Recent Funding History:

Fiscal Year	*Authorized*	*Appropriated*
1978	$10,000,000	$2,000,000
1979	12,000,000	2,400,000
1980	14,000,000	2,400,000
1981	16,000,000	2,950,000
1982	4,000,000	2,832,000
1983	4,000,000	Yet to be determined

Preschool Incentive Grants

Authorizing Provision: The Education for All Handicapped Children Act, P. L. 94-142, Section 619. (Also known as Part B, Section 619 of the Education of the Handicapped Act, EHA; 20 USC 1419.)

Purpose: To encourage states and localities to create or expand early intervention programs for handicapped children aged 3 to 5. This program is based on the premise that benefits are maximized, additional or more severe handicaps may be prevented, and greater long-term cost effectiveness is realized when education begins at the earlier stages of development.

Who Receives Funding: The Incentive Grant Program distributes funds on a formula basis to state education agencies based upon the number of preschool handicapped children being served. State education agencies in turn provide funds to local education agencies on a discretionary basis.

Kinds of Activities Supported: Federal support stimulates the development of state and local direct services for preschool handicapped children such as screening, assessment, and placement in a variety of developmental programs. In addition to vital early diagnosis, parents and teachers may be trained to work more effectively with the preschooler who is handicapped and in need of specialized services.

Recent Funding History:

Fiscal Year	*Authorized**	*Appropriated*
1978	$58,867,500	$12,500,000
1979	59,691,900	15,000,000
1980	64,691,100	17,500,000
1981	69,492,600	25,000,000
1982	25,000,000	24,000,000
1983	25,000,000	Yet to be determined

*For FY 1978 through FY 1981 states were authorized to receive grants up to $300 per child. Authorized figures on chart were derived using the maximum amount in the formula.

Special Studies

Authorizing Provision: Education of the Handicapped Act, Part B, Section 618; (20 USC 1418).

Purpose: To analyze the progress being made and the challenges remaining in providing a free appropriate public education to all handicapped children. Findings are included in an Annual Report to Congress to honor Congressional requests for information. The results of these studies also assist agency staff in providing technical assistance, training, and public information concerning implementation of the Act.

Who Receives Funding: Public and private agencies and associations including institutions of higher education are eligible to apply for annual contracts on a competitive basis.

Kinds of Activities Supported: Initially the special studies projects were targeted towards evaluating the general progress being made to implement P. L. 94-142. Currently, special studies projects are targeted to provide information about specific problems that need to be solved in order that a free appropriate public education can be provided for all handicapped children. Examples of special studies targeted to analyze persistent educational problems include the following areas of research: special education and related services available to populations that have historically been unserved or underserved, such as migrants, Hispanics, and children in correctional facilities; comparability of secondary and vocational programming available to handicapped children; and national efforts to provide a free appropriate public education to preschool handicapped children.

Recent Funding History:

Fiscal Year	*Authorized*	*Appropriated*
1978	Such Sums*	$2,300,000
1979	"	2,300,000
1980	"	1,000,000
1981	"	2,300,000
1982	$2,300,000	480,000
1983	2,300,000	Yet to be determined

*In passing this provision, the Congress authorized to be appropriated for each fiscal year such sums as may be necessary to carry out the provisions of section 1418. This authorization was superseded in 1982 and 1983.

Deaf-Blind Program

Authorizing Provision: Education of the Handicapped Act, Part C, Section 622; (20 USC 1422).
Purpose: To support state and local efforts in providing special education and related services to children who are both deaf and blind. Because services needed by these children are costly, highly specialized and extensive, and because of their relatively few numbers as well as scattered geographic distribution, a national effort and cooperation among levels of government is promoted through this program.
Who Receives Funding: State education agencies, institutions of higher education, medical centers, and other public or nonprofit agencies may apply for competitive contracts. Continued federal support is contingent upon demonstrated effectiveness and availability of funds.
Kinds of Activities Supported: There are two components of this program. The Deaf-Blind Center component begun in 1969 supports 16 single and multistate centers which provide the special education and related services to deaf-blind children. These services may be provided directly by the Centers, or through subcontracts negotiated by the Centers with a variety of state, local, and private organizations. In 1981, about 6,000 deaf-blind children received special education services through this program. The Centers also assist subcontractors with program development, staff training, curriculum development, and other planning.

The demonstration component was begun in 1978 to focus on the unique needs of adolescent deaf-blind children who, as a result of the rubella epidemic of 1965, constitute approximately one-fourth of this population. Models for vocational education and integration into community and family settings are developed under this component.
Recent Funding History:

Fiscal Year	*Authorized*	*Appropriated*
1978	$22,000,000	$16,000,000
1979	24,000,000	16,000,000
1980	26,000,000	16,000,000
1981	29,000,000	16,000,000
1982	16,000,000	15,360,000
1983	16,000,000	Yet to be determined

Regional Resource Centers

Authorizing Provision: Education of the Handicapped Act, Part C, Sections 621 and 624; (20 USC 1421 and 1424).

Purpose: Regional Resource Centers (RRC's) were created in 1969 to develop and apply the best methods of appraisal and educational programming for handicapped students. With the enactment of P. L. 94-142, the mission of the RRC's was changed to that of helping states and, through them, local education agencies to better comply with the requirements of the Act.

Who Receives Funding: Three-year contracts are awarded on a competitive basis to institutions of higher education, state education agencies, or combinations of these institutions with local education agencies.

Kinds of Activities Supported: Assistance is made available through technical assistance, training, and dissemination of information on a regional basis. For FY 1981 through FY 1983, RRC's will concentrate on the following areas of service delivery: child identification and evaluation, individualized education programs, placement, procedural safeguards, services for special populations, and coordination of comprehensive services.

The Direction Service Centers which were begun in 1976 are another component of this program. Through activities such as the identification of all available human services in a given area, matching client needs with existing services, client follow-up, and stimulating interagency cooperation, Direction Service Centers assist handicapped children and their parents to gain access to needed services. Particular emphasis has been placed on providing direction services to special populations, such as culturally diverse and severely handicapped children.
Recent Funding History:

Fiscal Year	*Authorized*	*Appropriated*
1978	$19,000,000	$9,750,000
1979	19,000,000	9,750,000
1980	21,000,000	9,750,000
1981	24,000,000	7,656,000
1982	9,800,000	2,880,000
1983	9,800,000	Yet to be determined

Early Childhood Education—Handicapped Children's Early Education Program (HCEEP)

Authorizing Provision: The Education of the Handicapped Act, Part C, Section 623 (20 USC 1423).

Purpose: The purpose of the Handicapped Children's Early Education Program (HCEEP) is to stimulate increased and improved services to young handicapped children (ages birth to 8 years) and their parents. This program, which began in 1969, has emphasized the development, demonstration, and dissemination of high quality models. This program complements the Preschool Incentive program by developing best practices models for preschool programs.

Who Receives Funding: A variety of public agencies and private nonprofit organizations are eligible to apply for HCEEP funds. Last year more than 200 projects were supported.

Kinds of Activities Supported: There are five complementary components of the HCEEP program. Each is designed to reach different groups of very young children and their families in different ways. The different program components include: (a) demonstration projects designed to provide locally visible, locally designed quality services through the development and demonstration of new models; (b) outreach projects to assist other agencies that elect to replicate successfully developed models; (c) state implementation grants to assist state education agencies build their capacity to plan for the development and expansion of early intervention services for handicapped children; (d) technical assistance to enable demonstration projects and state implementation grant projects to meet their objectives and use their resources most effectively; and (e) early childhood institutes to carry on sustained research in real-world settings instead of small laboratory situations, so that new information on young children, their families, and early intervention can be developed and disseminated.

Recent Funding History:

Fiscal Year	*Authorized*	*Appropriated*
1978	$25,000,000	$22,000,000
1979	25,000,000	22,000,000
1980	25,000,000	20,000,000
1981	20,000,000	17,500,000
1982	20,000,000	9,600,000
1983	20,000,000	Yet to be determined

Projects for the Severely Handicapped

Authorizing Provision: Education of the Handicapped Act, Part C, Sections 621 and 624; (20 USC 1421, 1424).

Purpose: To assist state and local agencies to better provide education and training to severely handicapped children and youth, many of whom require complex, varied and often times expensive educational services. In general, this group of children include those who are classified as seriously emotionally disturbed, autistic, profoundly and severely mentally retarded, and those with two or more handicapping conditions, such as the mentally retarded blind and the cerebral-palsied deaf.

Who Receives Funding: State departments of special education, intermediate or local educational agencies, institutions of higher education, and other public agencies and nonprofit organizations.

Kinds of Activities Supported: Since 1978 projects have been targeted to specific areas of national need respecting the education of severely handicapped individuals. Some of these needs have included: (a) deinstitutionalization; (b) models to develop educational interventions for autistic children; and (c) projects for the development of system-wide service delivery models for isolated and rural areas, urban areas, and entire states.

Recent Funding History:

Fiscal Year	*Authorized**	*Appropriated*
1978		$5,000,000
1979		5,000,000
1980		5,000,000
1981		4,375,000
1982	$5,000,000	2,880,000
1983	5,000,000	Yet to be determined

*Funds for Projects for the Severely Handicapped are requested under Part C, Section 621 although the authority to operate projects is derived from Section 624. Authorization for Section 621 were $19 million for 1978 and 1979, $21 million for 1980 and $24 million for 1981.

Instructional Media Services and Captioned Films

Authorizing Provision: Education of the Handicapped Act, Part F, Sections 652 and 653; (20 USC 1452 and 1453).
Purpose: To produce and distribute educational materials for handicapped students, their parents, educators, and employers. This program began in 1958 when Congress authorized a program to produce and lend captioned films to deaf persons and was later expanded to include media services for all handicapped persons. Presently, the specific purposes of the program are to provide a free loan service of captioned films for the educational advancement of handicapped persons through research, production, adaptation, distribution, and training in educational media and new technologies.
Who Receives Funding: Local educational agencies, institutions of higher education and appropriate public and nonprofit agencies are eligible to receive contract and grant awards.
Kinds of Activities Supported: Program components include the following: (a) Captioning and Recording supports projects that make television and film accessible to deaf and hearing impaired persons by developing, adapting, producing, and distributing captioned and other recorded materials. (b) Educational Media Materials Centers and Services provides a comprehensive program of activities to facilitate the use of new educational technology for the hearing impaired and severely handicapped. Specifically, the centers adapt, develop, evaluate, and disseminate specialized educational media materials and technology for the handicapped. (c) Marketing and Implementation, which began in 1977, supports contracts to help ensure that educational materials and media products are disseminated to handicapped students and their educators. (d) Demonstration and Development funds projects to conduct research in educational media for the handicapped, produce and distribute educational media, and train persons in the use of media for instructional purposes. (e) National Theatre of the Deaf provides support for a company of deaf actors to conduct national tours and perform for a variety of audiences. In addition, the company provides theatre arts instruction to school programs and conducts summer sessions to improve public perception of handicapped persons. (f) Recordings for the Blind supports the recording of textbooks on tape to assist visually handicapped students.
Recent Funding History:

Fiscal Year	*Authorized*	*Appropriated*
1978	$24,000,000	$19,000,000
1979	25,000,000	19,000,000
1980	27,000,000	19,000,000
1981	29,000,000	17,000,000
1982	19,000,000	11,520,000
1983	19,000,000	Yet to be determined

Recruitment and Information

Authorizing Provision: Education of the Handicapped Act, Part D, Section 633; (20 USC 1433).
Purpose: This program has a dual mission: (a) encouraging careers in the field of special education where there are shortages and (b) promoting greater public awareness of the needs of handicapped children and of the services that are available to them.
Who Receives Funding: Contracts and grants are awarded on a competitive basis to public or private agencies and organizations.
Kinds of Activities Supported: The program (a) supports a national center for preparing and distributing information on national issues, (b) supports a media campaign to direct inquiries to the information center and to educate the public on issues that affect handicapped children, and (c) assists in the development of local parent organizations to help individual parents make a variety of difficult decisions concerning the future of their handicapped child.
Recent Funding History:

Fiscal Year	*Authorized*	*Appropriated*
1978	$2,000,000	$1,000,000
1979	2,000,000	1,000,000
1980	2,500,000	1,000,000
1981	2,500,000	750,000
1982	1,000,000	720,000
1983	1,000,000	Yet to be determined

Innovation and Development

Authorizing Provision: Education of the Handicapped Act, Part E; (20 USC 1424).

Purpose: Program activities are directed at developing new knowledge, methods and materials to help the Nation's schools fulfill their commitment to handicapped children. Because research and demonstration activities tend to be of national significance, the effort is made to develop mechanisms that will produce the broadest possible diffusion, utilization, and implementation of the products of research and development.

Who Receives Funding: Those eligible for grants and contracts include state and local education agencies, institutions of higher education, and other public and private agencies. Projects can be funded up to five years and are initially awarded through national competition.

Kinds of Activities Supported: Research has been both field initiated and agency directed. The projects do not have direct service as their primary goal, but rather the design, development, and testing of concepts, methods, and materials for ultimate use by agencies providing services. The program produces and disseminates research reports, instructional products, program models, and innovative practices. Priorities for research and model programs include: research integration; technology utilization research; assessment research; youth employment research; ethnic or racial group handicapped research; non-vocal communication research; school based research; student initiated research; related services demonstration project; secondary age/level demonstration projects; and specific handicapping conditions.

Recent Funding History:

Fiscal Year	*Authorized*	*Appropriated*
1978	$20,000,000	
1979	22,000,000	
1980	24,000,000	$20,000,000
1981	26,000,000	15,000,000
1982	20,000,000	7,200,000
1983	20,000,000	Yet to be determined

Special Education Personnel Development

Authorizing Provision: Education of the Handicapped Act, Part D, Sections 631, 632, and 634; (20 USC 1431, 1432, 1434).

Purpose: This discretionary program, which began in 1966, provides support to promote an adequate supply of qualified special education and support personnel. Recently, the program has had four major purposes: (a) preparation of fully trained and certified special educators, (b) preparation of support personnel, (c) special education training for regular education teachers, and (d) development of innovative training models.

Who Receives Funding: Institutions of higher education, state and local education agencies, and other nonprofit institutions and agencies may apply for funding. Although the vast majority of grantees are colleges and universities, individuals may receive financial aid indirectly through a recipient institution.

Kinds of Activities Supported: Program activities include: (a) preservice and inservice training opportunities for teachers of mildly, moderately, severely, and multihandicapped children (based on emerging state and local needs, training programs have also targeted on preparing special educators for rural and urban areas, as well as special populations, such as bilingual and Indian handicapped children); (b) training for support personnel, such as teacher aides, diagnosticians, and psychologists, noninstructional staff (i.e., counselors, administrators), interdisciplinary personnel, physical education and recreational staff, volunteers, parents, and vocational and career educators; (c) training of regular classroom teachers, administrators and other school personnel as well as the development and dissemination of inservice models and instructional materials; (d) development of instructional models for the preparation of special education; and (e) training of parents of handicapped children through parent coalition projects.

Recent Funding History:

Fiscal Year	*Authorized*	*Appropriated*
1978	$75,000,000	$45,400,000
1979	80,000,000	57,700,000
1980	85,000,000	55,500,000
1981	90,000,000	43,500,000
1982	58,000,000	33,600,000
1983	58,000,000	Yet to be determined

Appendix B

Federal Laws for the Handicapped

Title	*Date of enactment*	*P. L. No.*
An Act to provide for the location of the two townships of land reserved for a seminary of learning in the territory of Florida, and to complete the location of the grant to the Deaf and Dumb Asylum of Kentucky	1/29/1827	19-8
An Act to extend the time for selling the lands granted to the Kentucky Asylum for teaching the deaf and dumb	2/18/1847	29-11
An Act to establish in the District of Columbia a Government Hospital for the Insane	3/3/1855	33-4
An Act to establish the Columbia Institute for the Deaf and Dumb	2/16/1857	34-5
An Act to incorporate the Columbia Institution for the Instruction of the Deaf and Dumb and the Blind	2/16/1857	34-46
An Act to amend the "Act to incorporate the Columbia Institution for the Instruction of the Deaf and the Dumb and the Blind"	5/29/1858	35-59
An Act making appropriations for sundry civil expenses of the government (first appropriations bill)	6/12/1858	35-154
An Act to authorize the Columbia Institution for the Deaf and Dumb and Blind to confer degrees	4/8/1864	38-52
An Act making appropriations for sundry civil expenses of the government for the year ending June 30, 1865, and for other purposes	7/2/1864	38-210
An Act to amend an Act entitled, "An Act to incorporate the Columbia Institution for the Instruction of the Deaf and the Dumb and Blind"	2/23/1865	38-50
An Act making appropriations for sundry civil expenses of the government for the year ending June 30, 1868, and for other purposes	3/2/1867	39-167
An Act to amend existing laws relating to Internal Revenue and for other purposes	3/2/1867	39-169
An Act to promote the education of the blind	3/3/1879	45-186
An Act regulating postage on letters written by the blind	7/7/1898	55-HR4304

Title	*Date of enactment*	*P. L. No.*
An Act to promote the circulation of reading matter among the blind	5/27/1904	58-171
An Act to modify the requirements of the Act entitled "An Act to promote the education of the blind," approved 3/3/1879	6/25/1906	59-288
An Act making appropriations for the services of the Post Office Department for the fiscal year ending June 3, 1913, and for other purposes	8/24/12	62-336
Vocational Rehabilitation Act (for discharged military personnel)	6/27/18	65-178
An Act providing additional aid for the American Printing House for the Blind	8/4/19	66-24
An Act to provide for promotion of vocational rehabilitation of persons disabled in industry or otherwise and their return to civil employment	6/2/20	66-236
An Act providing additional hospital facilities for patients of the Bureau of War Risk Insurance and of the Federal Board for Vocational Education, Division of Rehabilitation, and for other purposes	3/4/21	66-384
An Act to establish a Veterans' Bureau and to improve the facilities and services of such bureau and further to amend and modify the War Risk Insurance Act	8/9/21	67-47
An Act amending Subdivision 5 of Section 302 of the War Risk Insurance Act	12/18/22	67-370
An Act to authorize an appropriation to enable the Director of the United States Veterans Bureau to provide additional hospital facilities	6/5/24	68-197
An Act to amend sections 1, 3, and 6 of an act entitled, "An Act to provide for the promotion of vocational rehabilitation of persons disabled in industry or otherwise and their return to civil employment"	6/5/24	68-200
An Act to incorporate the United States Blind Veterans of the World War	6/7/24	68-218
World War Veterans' Act of 1924	6/7/24	68-242
An Act to amend paragraph (1) of section 22 of the Interstate Commerce Act by providing for the carrying of a blind person, with a guide, for one fare	2/26/27	69-655
An Act to amend the Act providing additional aid for the American Printing House for the Blind	2/8/27	69-584
An Act to amend an Act entitled, "An Act to provide for the promotion of vocational rehabilitation of persons disabled in industry or otherwise and their return to civil employment"	6/9/30	71-317
An Act to provide books for the adult blind	3/3/31	71-787
To amend an Act entitled "An Act to provide for the promotion of vocational rehabilitation of persons disabled in industry or otherwise and their return to civil employment," approved June 2, 1920, as amended	6/30/32	72-222

Title	*Date of enactment*	*P. L. No.*
To amend section 1 of the Act entitled, "An Act to provide books for the adult blind," approved 3/3/31	3/4/33	72-439
To amend the Act entitled, "An Act to promote the circulation of reading matter among the blind," approved April 27, 1904, and Acts supplemental thereto	5/9/34	73-214
To authorize an increase in the annual appropriation for books for the adult blind	6/14/35	74-139
Social Security Act	8/14/35	74-271
To authorize the operation of stands in federal buildings by blind persons, to enlarge the economic opportunities of the blind, and for other purposes	6/20/36	74-732
To provide special rates of postage on matter for the blind	4/15/37	75-37
To authorize an increase in the annual appropriation for books for the adult blind	4/23/37	75-47
To amend the Interstate Commerce Act (seeing eye dogs)	7/5/37	75-184
To amend the Act approved August 4, 1919, as amended, providing additional aid for the American Printing House for the Blind	8/23/37	74-339
United States Housing Act of 1937	9/1/37	75-412
To amend the Acts for promoting the circulation of reading matter among the blind	5/16/38	75-523
To create a Committee on Purchases of Blind-made products and for other purposes—Wagner-O'Day Act of 1938	6/25/38	75-739
To amend the Act entitled, "An Act to provide books for the adult blind," approved 3/3/31	6/7/39	76-118
Social Security Act Amendments of 1939	8/10/39	76-379
To amend the Act entitled, "An Act to provide books for the adult blind," approved 3/3/31	6/6/40	76-562
To further amend the Acts for promoting the circulation of reading matter among the blind	10/14/41	77-270
To permit seeing eye dogs to enter government buildings when accompanied by their blind masters, and for other purposes	12/10/41	77-330
To amend section 1 of the Act entitled, "An Act to provide books for the adult blind," approved 3/3/31, as amended	10/1/42	77-726
To amend Title I of Public Law Number 2, 73rd Congress, March 30, 1933, and the Veterans Regulation to provide for rehabilitation of disabled veterans, and for other purposes	3/24/43	78-16
Vocational Rehabilitation Act Amendments of 1943	7/6/43	78-113
To provide revenue, and for other purposes or "The Revenue Act of 1943"	2/25/44	78-235
To amend the Act entitled, "An Act to provide books for the adult blind"	6/13/44	78-338
Servicemen's Readjustment Act	6/22/44	78-346

Title	*Date of enactment*	*P. L. No.*
To amend the Act entitled, "An Act to provide books for the adult blind"	8/8/46	79-661
Social Security Act Amendments of 1946	8/10/46	79-719
Revenue Act of 1948	4/2/48	80-471
To amend the Civil Service Act to remove certain discrimination with respect to the appointment of persons having any physical handicap to positions in the classified civil service	6/10/48	80-617
To maintain status quo in respect of certain employment taxes and social security benefits pending action by Congress on extended social security coverage	6/14/48	80-642
Authorizing an appropriation for the work of the President's Committee on National Employ the Physically Handicapped Week	7/11/49	81-162
To permit the sending of braille writers to or from the blind at the same rates as provided for their transportation for repair purposes	9/7/49	81-290
Social Security Act Amendments of 1950	8/28/50	81-734
To restore to seventy pounds and one hundred inches in girth and length combined the maximum weight and size limitations for appliances or parts thereof, for the blind sent through the mails	4/9/52	82-308
To amend the Act approved 8/4/19 as amended, providing additional aid for the American Printing House for the Blind	5/22/52	82-354
To amend the Act entitled, "An Act to provide books for the adult blind"	7/3/52	82-446
Social Security Act Amendments of 1952	7/18/52	82-590
To change the Columbia Institution to Gallaudet College, define its corporate powers, and provide for its organization and administration and other purposes	6/18/54	83-420
To authorize cooperative research in education	7/26/54	83-531
Vocational Rehabilitation Amendments of 1954	8/3/54	83-565
Social Security Amendments of 1954	9/1/54	83-761
To amend the Interstate Commerce Act in order to authorize common carriers and such attendants at the usual fare charged for one person	7/27/56	84-825
Social Security Amendments of 1956	8/1/56	84-880
To amend the Act to promote the education of the blind, approved March 3, 1879, as amended, so as to authorize wider distribution of books and other special instructional material for the blind, to increase the appropriations authorized for this purpose, and for other purposes	8/2/56	84-922
To amend an Act entitled, "An Act to provide books for the adult blind"	9/7/57	85-308
Social Security Amendments of 1958	8/28/58	85-840
National Defense Education Act of 1958	9/2/58	85-864

Title	*Date of enactment*	*P. L. No.*
To provide in the Department of HEW a loan service of captioned films for the deaf	9/2/58	85-905
To encourage expansion of teaching in the education of mentally retarded children through grants to institutions of higher learning and to state educational agencies	9/6/58	85-926
Housing Act of 1959	9/23/59	86-372
Social Security Amendments of 1960	9/13/60	86-778
To make available to children who are handicapped by deafness the specially trained teachers of the deaf needed to develop their abilities and to make available to individuals suffering speech and hearing impairments the specially trained speech pathologists and audiologists needed to help them overcome their handicaps	9/22/61	87-276
To amend the Act to promote the education of the blind, approved March 3, 1879, as amended, so as to authorize wider distribution of books and other special instruction materials for the blind, and to increase the appropriations authorized for this purpose, and to otherwise improve such Act	9/22/61	87-294
Public Welfare Amendments of 1962	7/25/62	87-543
To authorize the employment without compensation from the Government of readers for blind Government employees, and for other purposes	8/29/62	87-614
To provide for the production and distribution of educational and training films for use by deaf persons, and for other purposes	9/28/62	87-715
To establish in the Library of Congress a library of musical scores and other instructional materials to further educational, vocational, and cultural opportunities in the field of music for blind persons	10/9/62	87-765
To amend the Public Health Service Act to provide for the establishment of an Institute of Child Health & Human Development	10/17/62	87-838
Social Security Act Amendments of 1963	10/24/63	88-156
Mental Retardation Facilities & Community Mental Health Centers Construction Act of 1963	10/31/63	88-164
To authorize the President to issue annually a proclamation designating the first week in March of each year as "Save Your Vision Week"	12/30/63	88-242
Hospital & Medical Facilities Amendments of 1964	8/18/64	88-443
To authorize the President to proclaim October 15 of each year as "White Cane Safety Day"	10/6/64	88-628
Social Security Amendments of 1964	10/13/64	88-641
Social Security Amendments of 1964	10/13/64	88-650
Elementary & Secondary Education Act of 1965, as amended	4/11/65	89-10
National Technical Institute for the Deaf Act	6/8/65	89-36
Social Security Amendments of 1965	7/30/65	89-97

Title	*Date of enactment*	*P. L. No.*
Mental Retardation Facilities & Community Mental Health Centers Construction Act of 1965	8/4/65	89-105
Community Health Service Extension Amendments of 1965	8/5/65	89-109
Heart Disease, Cancer and Stroke Amendments of 1965	10/6/65	89-239
Captioned Films for the Deaf Act	10/19/65	89-258
Federal Assistance to State Operated & Supported Schools for the Handicapped	11/1/65	89-313
Vocational Rehabilitation Act Amendments of 1966	11/8/65	89-333
Library Services & Construction Act Amendments of 1966	7/19/66	89-511
An Act to provide books for the adult blind	6/30/66	89-522
Fair Labor Standards Amendments of 1966	9/23/66	89-601
Military Medical Benefits Amendments of 1966	9/30/66	89-614
Model Secondary School for the Deaf Act	10/15/66	89-694
Comprehensive Health Planning & Public Health Services Amendments of 1966, "Partnership for Health"	11/3/66	89-749
Elementary & Secondary Education Act Amendments of 1966	11/3/66	89-750
Higher Education Act Amendments of 1966	11/3/66	89-752
Mental Health Amendments of 1967	6/24/67	90-31
To amend Title V of the Higher Education Act and redesignate it as the Educational Professions Development Act	6/29/67	90-35
Vocational Rehabilitation Amendments of 1967	10/3/67	90-99
To amend the Library Services & Construction Act	11/24/67	90-154
Mental Retardation Amendments of 1967	12/4/67	90-170
Partnership for Health Amendments of 1967	12/5/67	90-174
Postal Revenue & Federal Act of 1967	12/16/67	90-206
Elementary & Secondary Education Amendments of 1967	1/2/68	90-247
Social Security Amendments of 1967	1/2/68	90-248
Vocational Rehabilitation Amendments of 1968	7/7/68	90-391
To increase size of the Board of Directors of Gallaudet College	7/23/68	90-415
To establish a register of blind persons in the District of Columbia, to provide for the mandatory reporting of information concerning such persons and for other purposes	8/3/68	90-458
Elimination of Architectural Barriers to Physically Handicapped	8/12/68	90-480
Establishment of National Eye Institute	8/16/68	90-489
Handicapped Children's Early Education Assistance Act	9/30/68	90-538
Health Services and Facilities Amendments of 1968	10/15/68	90-574
Higher Education Amendments of 1968	10/16/68	90-575

Title	*Date of enactment*	*P. L. No.*
Vocational Education Amendments of 1968	10/16/68	90-576
To authorize the President to issue a proclamation designating the first week in June of 1969 as "Helen Keller Memorial Week"	5/28/69	91-17
To provide for a National Center on Educational Media and Materials for the Handicapped and for other purposes	3/20/69	91-61
Older Americans Act Amendments of 1969	9/17/69	91-69
Tax Reform Act of 1969	12/30/69	91-172
To insure that certain federally constructed facilities be constructed so as to be accessible to the physically handicapped	3/5/70	91-205
To extend the Migrant Health Act for three years, and provide increased authorization therefor	3/12/70	91-209
To provide grants for construction of community mental health centers	3/13/70	91-211
To extend programs of assistance for elementary and secondary education	4/13/70	91-230
Postal Reorganization Act	8/12/70	91-375
To broaden National Employ the Physically Handicapped Week to apply to all handicapped workers	10/8/70	91-442
To provide long term financing for expanded urban mass transportation programs	10/15/70	91-453
To revise certain criteria for handling mentally retarded persons in the Forest Haven Institution in the District of Columbia	10/22/70	91-490
Developmental Disabilities Services and Facilities Construction Amendments of 1970	10/30/70	91-517
To improve family planning services and population research activities of the federal government	12/24/70	91-572
To authorize Gallaudet College to maintain and operate the Kendall School as a demonstration elementary school for the deaf	12/24/70	91-587
Occupational Safety and Health Act of 1970	12/29/70	91-596
Housing and Urban Development Act of 1970	12/31/70	91-609
To extend for one year the authorization for various programs under the Vocational Rehabilitation Act	12/31/70	91-610
To provide assistance in developing and administering lead-based paint elimination programs	1/13/71	91-695
Wagner-O'Day Amendments	6/23/71	92-28
Military Medical Benefits Amendments	7/29/71	92-58
Revenue Act of 1971	12/10/71	92-178
Intermediate Care Amendments of 1971	12/28/71	92-223
Free or reduced-rate transportation for attendants for the blind	6/22/72	92-316
Education Amendments of 1972	6/23/72	92-318

Title	*Date of enactment*	*P. L. No.*
Social Security Benefit Increase	7/1/72	92-336
Maternal and Child Health Amendments	7/10/72	92-345
Economic Opportunity Amendments of 1972	9/19/72	92-424
Rights of the blind and other physically handicapped in the District of Columbia	10/21/72	92-515
National Advisory Commission on Multiple Sclerosis Act	10/25/72	92-563
Small Business Investment Act Amendments of 1972	10/27/72	92-595
Social Security Amendments of 1972	10/30/72	92-603
Older Americans Comprehensive Services Amendments of 1973	5/3/73	93-29
National Autistic Children's Week	6/15/73	93-42
Health Programs Extension Act of 1973	6/18/73	93-45
Maternal and Child Health Amendments	7/1/73	93-53
Renegotiation Act Amendments	7/9/73	93-66
Committee for Purchase of Products and Services of the Blind and Other Handicapped	7/30/73	93-76
Federal Aid Highway Act of 1973	8/13/73	93-87
Rehabilitation Amendments of 1973	9/26/73	93-112
Domestic Volunteer Services Act of 1973	10/1/73	93-113
Amtrak Improvement Act of 1973	11/3/73	93-146
Lead-based Paint Poisoning Prevention Amendments	11/9/73	93-151
Social Security Amendments of 1973	12/31/73	93-233
Supplemental Security Income Benefits	3/28/74	93-256
General Education Amendments	4/18/74	93-269
National School Lunch & Child Nutrition Act of 1974	6/30/74	93-326
Extend Food Stamp Eligibility to SSI Recipients	7/8/74	93-335
National Research Act	7/12/74	93-348
Wagner-O'Day Act Amendments	7/25/74	93-358
Foreign Equipment Import Duty (Social Security rider)	8/7/74	93-368
Education Amendments of 1974	8/21/74	93-380
Housing and Community Development Act of 1974	8/22/74	93-383
Juvenile Delinquency & Prevention Act of 1974	9/7/74	93-415
Import Duty on Horses (Social Security rider)	10/26/74	93-484
National Mass Transportation Assistance Act of 1974	11/26/74	93-503
Rehabilitation Act Amendments of 1974	12/7/74	93-516
March of Dimes Month	12/30/74	93-561

Title	*Date of enactment*	*P. L. No.*
National Arthritis Act of 1974	1/4/75	93-640
National Health Planning & Resources Development Act of 1974	1/4/75	93-641
Federal-Aid Highway Amendments of 1974	1/4/75	93-643
Community Services Act of 1974	1/4/75	93-644
Social Services Amendments of 1974	1/4/75	93-647
To extend SSI to continue food stamp eligibility for recipients	6/28/75	94-44
Education for All Handicapped Children Act	11/29/75	94-142
The Education Amendments of 1976 (strengthens provisions for handicapped youth in vocational education)	10/12/76	94-482
The Education Amendments of 1978 (includes Gifted and Talented Children's Education Act of 1978 and includes extension of provisions of P. L. 94-142 to Department of Defense Overseas Schools)	11/1/78	95-561
The Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978	11/6/78	95-602
An Act to Create a Federal Department of Education (established Office of Special Education and Rehabilitative Services)	10/17/79	96-88
The Omnibus Budget Reconciliation Act of 1981 (includes Education Consolidation and Improvement Act of 1981)	8/13/81	97-35

Appendix C

Resources

Special Education in America: Its Legal and Governmental Foundations Series

Frederick J. Weintraub, Editor.

Concise reports that focus on specialized areas of concern affected by public policy. Each report provides an analysis of significant research related to the issue, summarizes current policy provisions, and offers options for future decisions. Reports in this series will be published as issues emerge. To obtain information on the latest reports, contact the Department of Information Services, The Council for Exceptional Children, 1920 Association Drive, Reston VA 22091, 703/620-3660.

The *Special Education in America: Its Legal and Governmental Foundations Series* is produced by the ERIC Clearinghouse on Handicapped and Gifted Children with funding from the National Institute of Education, U.S. Department of Education. Documents in this series are developed as ERIC Exceptional Child Education Reports.

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Barbara J. Smith
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Leonard Baca
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Frederick J. Weintraub and Scottie Higgins
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Delivery of Postsecondary Education to Handicapped Students
Delivering Services to Exceptional Students in Rural Areas

Other CEC Publications

Model State Policy, Legislation and State Plan Toward the Education of Gifted and Talented Students: A Handbook for State and Local Districts
John A Grossi
This guide contains model state policy statement, statute, and state plan designed tc provide a basis for a free appropriate public education for all gifted and talented students who require special education and related services. 224 pp. Stock No. 204. ISBN 0-86586-101-3.

An Administrator's Handbook on Designing Programs for the Gifted and Talented
June B. Jordan and John A. Grossi, Editors
A guide for planning, developing, and implementing programs for the gifted at the local district level. Major content areas examine: needs assessment, screening and identification, differentiation of instruction, budgeting, staffing, materials selection, the culturally diverse and handicapped gifted, and policy considerations. A chapter on resources for use by administrators is also included. Contributors: Mary M. Fraiser, John A. Grossi, Marie S. Gustin, Edwina D. Pendarvis, Joyce Van Tassel, and William G. Vassar. CEC-ERIC 175 pp. Stock No. 215. ISBN 0-86586-112-9.

Special Education in Transition 2
Educating Hard of Hearing Children
Mark Ross and Linda W. Nober, Editors
A collaborative effort of speech-language pathologists, an audiologist, a special educator, a classroom teacher, and a parent. Describes how each profession interacts with the others to create a strong, supportive network of services that can successfully maintain hard of hearing children in regular classroom settings. Includes considerations for developing IEP's for hard of hearing students. 118 pp. Stock No. 233. ISBN 0-86586-121-8.

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Administrator's Handbook on Integrating America's Mildly Handicapped Students
JWK International Corporation
Describes over one hundred successful strategies employed throughout the country to deliver services to handicapped youngsters in the least restrictive environment. Included are strategies for referral and placement, managing increased workload, planning, acquiring, and allocating resources, community involvement, using resources, interagency agreements, contractual arrangements, internal and external public communication, creating and redefining personnel roles, strategies for using teams and paraprofessionals, and planning staff development programs. 128 pp. Stock No. 240. ISBN 0-86586-126-9.

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A Study of the Implementation of Public Law 94-142 for Handicapped Migrant Children, John N. Pyecha and Lucia A. Ward
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Issues in the Education of Culturally Diverse Exceptional Children, Leonard Baca
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Nondiscriminatory Evaluation, Donald B. Bailey, Jr., and Gloria L. Harbin

Social and Emotional Needs of Culturally Diverse Children, Ronald W. Henderson

Curriculum Adaptations and Modifications for Culturally Diverse Handicapped Children, Helen P. Almanza and William J. Mosley

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Career Opportunities for Culturally Diverse Handicapped Youth, George W. Fair and Allen R. Sullivan

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Exceptional Children, Vol. 44, No. 7, April 1978, pp. 521–528

'Advocate' vs. 'Professional Employee': A Question of Priorities for Special Educators, Greg H. Frith
Exceptional Children, Vol. 47, No. 7, April 1981, pp. 486–492

Educating the Severely/Profoundly Handicapped in the Public Schools: A Side-By-Side Approach, Jo Thomason and Claudia Arkell
Exceptional Children, Vol. 47, No. 2, October 1980, pp. 114–122

Issues in the Implementation of Extended School Year Programs for Handicapped Students, Larry Larsen, Libby Goodman, and Richard Glean
Exceptional Children, Vol. 47, No. 4, January 1981, pp. 256–263

Minimum Competency Testing and Handicapped Students, Martha M. McCarthy
Exceptional Children, Vol. 47, No. 3, November 1980, pp. 166–172

Problems in Implementing Comprehensive Special Education Programming in Rural Areas, Doris I. Helge
Exceptional Children, Vol. 47, No. 3, April 1981, pp. 514–520

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